

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

**November 8, 2012
Albuquerque
November 9, 2012
Santa Fe**

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The fifth meeting of the Water and Natural Resources Committee was called to order by Representative Joseph Cervantes, chair, at 9:50 a.m. on Thursday, November 8, 2012, at the Albuquerque-Bernalillo County Water Utility Authority in Albuquerque.

Present

Rep. Joseph Cervantes, Chair
Rep. Paul C. Bandy
Sen. Mary Jane M. Garcia (Nov. 8)
Rep. Thomas A. Garcia
Rep. Larry A. Larrañaga (Nov. 9)
Sen. Gerald Ortiz y Pino
Sen. Sander Rue
Rep. Mimi Stewart
Rep. James R.J. Strickler
Rep. Don L. Tripp
Sen. Pat Woods

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Absent

Sen. Phil A. Griego, Vice Chair
Rep. Ray Begaye
Rep. Brian F. Egolf, Jr.
Rep. William "Bill" J. Gray
Rep. Dona G. Irwin
Sen. George K. Munoz
Sen. Steven P. Neville
Rep. Andy Nuñez
Sen. Mary Kay Papen

Advisory Members

Sen. Rod Adair
Rep. Anna M. Crook
Rep. Nora Espinoza (Nov. 8)
Rep. James Roger Madalena (Nov. 8)
Sen. Cisco McSorley
Rep. Bill B. O'Neill (Nov. 9)
Sen. Nancy Rodriguez (Nov. 8)
Sen. John C. Ryan (Nov. 9)
Sen. Peter Wirth

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Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Candy Spence Ezzell
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. Rodolpho "Rudy" S. Martinez
Rep. Henry Kiki Saavedra

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

Staff

Jon Boller, Legislative Council Service (LCS)
Jeret Fleetwood, LCS

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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 LCS web site.

Thursday, November 8

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

D Ken Sanchez, chair of the Albuquerque-Bernalillo County Water Utility Authority (ABCWUA), welcomed the committee and thanked the members for holding the meeting in Albuquerque.

Wayne Johnson, vice chair of the ABCWUA, also welcomed the committee to the facility and thanked the members for holding a meeting there.

New Mexico First/New Mexico Environmental Program to Stimulate Competitive Research (NMEPSCor) Report on the Las Conchas Fire

Mary Jo Daniel, associate director of NMEPSCor, provided the committee with a brief overview of NMEPSCor, explaining that the program seeks to build on New Mexico's ability to do research, education and outreach. She went on to note that NMEPSCor held a series of town hall meetings regarding the Los Conchas fire to gather input and develop recommendations. Ms. Daniel went on to discuss some of the recommendations produced by the town halls, such as:

- creating and implementing water source protection plans;
- creating and implementing landscape-scale plans for forests and watersheds;
- updating and re-implementing the New Mexico Forest and Watershed Health Plan;
- highlighting the economic benefits of fire mitigation and watershed protection and restoration;
- developing sustainable economic development opportunities using renewable forests and resources;
- educating the public about wildfire effects and mitigation; and
- educating the public about controlled burns.

Janie Chermak of the University of New Mexico was one of the town hall speakers. She noted that there have been several catastrophic wildfires in the last few years. She pointed out that the suppression and re-seeding costs, in addition to other one-time costs associated with wildfires, add up to tremendous amounts of money. She also noted that water quality issues and downstream costs add to the overall price tag. Dr. Chermak pointed out that a chance exists to reduce the potential for wildfires through watershed management and restoration.

Questions and comments from the committee included:

- use of cattle in multi-use areas to help improve forest health;
- the necessity for government agencies to work with one another to address forest

- health issues;
- consideration of a bill to allow counties to declare emergencies in their forests;
- development of landowner liability legislation;
- changes the U.S. Forest Service can make to improve the job it does;
- that adequate funding does not exist to conduct forest health improvements on the necessary scale;
- controlled burns and commercial timber harvesting as means of improving forest health; and
- other ways of looking at forest health costs, such as involving private industry in improving forest health.

Acequia Issues and HJM 10 (2012) Report

Paula Garcia of the New Mexico Acequia Association provided the committee with testimony regarding the association's legislative priorities. She explained that budget priorities include continued solvency of the New Mexico Irrigation Works Construction Fund, restoration of higher funding levels for the Acequia and Community Ditch Fund and continued funding for the Acequia and Community Ditch Education Program. Ms. Garcia also noted that policy issues include capital outlay reform, legislation addressing water rights transfers and clarification about the method to be used by the state engineer in making administrative determinations of water rights where there is no partial or final decree from a court.

Ralph Vigil, chair of the Acequia Commission, also discussed capital outlay issues as they relate to acequias, recommending that capital outlay reform include consideration of acequias, including the need for technical assistance in the planning and design process.

William Gonzales provided the committee with a report on House Joint Memorial 10 from the 2012 session, which called for studying methods of mutual cooperation between the Middle Rio Grande Conservancy District (MRGCD) and acequia associations in Albuquerque's South Valley. He explained that representatives from the MRGCD and South Valley acequia associations met over the past few months. He noted that while some issues have been brought up, such as problems between acequia mayordomos and MRGCD ditch riders, all parties seem to agree that discussion and dialogue are the best ways of addressing those issues, as opposed to litigation.

Questions and comments from the committee included the following:

- the MRGCD and acequia associations are looking for ways to solve problems other than the state paying everyone's attorney fees;
- while a bill addressing some the acequia and MRGCD issues died during the 2009 legislative session, it became clear that progress could be made by getting the parties together;
- many water projects funded by severance tax bonds go through the Water Trust Board;
- water projects are not usually funded by general obligation bonds;
- the lack of representation in the Congreso de las Acequias from San Juan County; and

- inclusion of lateral ditches on acequia maps.

Fencing Issues on Railway Rights of Way

Caren Cowan, executive director of the New Mexico Cattle Growers' Association, and John Conner provided the committee with an update on an issue the committee heard at its July 30-31 meeting regarding fencing and railroads. Mr. Conner indicated that two days after the July meeting, he was contacted by the railroad about repairing his fence, but actual repairs had only begun recently. Mr. Conner and Ms. Cowan noted that progress in this type of case is usually slow, and there is not especially good communication with the railroads. They also pointed out that while some questions might exist about land ownership, it seems as though it would be best for the railroad to build all necessary fences now.

Questions and comments from the committee included the following:

- the law addressing fencing issues could be clarified to include penalties for railroads that do not comply with the law; and
- landowners can sue the railroad for both damages and attorney fees.

Rio Grande Environmental Management Program

Representative Stewart explained that the Rio Grande Environmental Management Program is a multistate collaborative mechanism for working with state, federal, local, international, tribal and nongovernmental stakeholders to develop a database for information regarding the Rio Grande Basin. She noted that it is a basin-specific authority that will help leverage federal money for the Rio Grande.

John D'Antonio, deputy district engineer for project management for the U.S. Army Corps of Engineers, explained that the program was originally authorized in 2007, and that while it sunset in 2011, the United States Senate has started to work on a new bill that could reauthorize up to \$15 million for the entire basin. He noted that the basin stretches from Colorado to the Gulf of Mexico and includes the river's major tributaries, including the Pecos River. Mr. D'Antonio also pointed out that the program requires a local sponsor and that nothing in the program would preempt state water law. Instead, he indicated that the program would help fund construction of water projects, not studies, in the basin. Mr. D'Antonio pointed out that the threat of litigation with Texas over water is always present, and any program that helps address water issues in the Rio Grande Basin could prove helpful in preventing litigation.

James Hogan of the Department of Environment's Surface Water Quality Bureau echoed Mr. D'Antonio's comments, noting that the Rio Grande Basin covers the two most important rivers in New Mexico, and helps address the Rio Grande Basin Salinity Management Program, which examines salinity in the river between San Acacia, New Mexico and Fort Quitman, Texas.

Questions and comments from the committee included the following:

- the Rio Grande Basin Salinity Management Program looked at river salinity farther north than San Acacia, but the size of Elephant Butte Reservoir means that the most impact would be realized below the reservoir;

- a memorial encouraging Congress to reauthorize the program is the only likely legislation for the 2013 session;
- the Rio Grande Environmental Management Program could address salinity issues as part of its mission;
- most of the Rio Grande's salinity comes from geologic processes and is not easily mitigated;
- too many drip systems can contribute to increased consumptive use of water and salinity levels; and
- most New Mexico irrigation districts use a return flow system, and the MRGCD has reduced some of its diversions due to increased efficiency.

D **ABCWUA Overview**

Paul Robinson, research director for the Southwest Research and Information Center, explained that there are a number of threats to Albuquerque's drinking water, most notably from Kirtland Air Force Base (KAFB), where large jet fuel spills are creeping toward the city's ground water supplies. He noted that the Department of Environment served KAFB with a notice of deficiency, but the order is not being enforced. Mr. Robinson encouraged the legislature to draft a memorial asking the federal government to commit additional funding to address ground water contamination in Albuquerque.

Dave McCoy of Citizen Action New Mexico noted that the biggest threats to Albuquerque's ground water supplies are dumping and drought. He mentioned that a mixed-use landfill used by Sandia National Laboratories (SNL) and the KAFB jet fuel spill were both contaminating the ground water. He emphasized that small amounts of jet fuel are capable of contaminating trillions of gallons of water and that most known technologies will not be able to clean it. He suggested that memorials asking for a five-year review to be conducted on the area's ground water and for increased monitoring wells be considered by the legislature.

Joe Wexler of the Agua es Vida Action Team provided the committee with additional testimony regarding Albuquerque's ground water supply. Mr. Wexler noted that SNL and KAFB need help in addressing their respective contamination issues before the contamination damages the city water supply. He also said that the ABCWUA plans to pump water into aquifers to store water for future use, but that water could become contaminated, too. Mr. Wexler suggested that the Office of the State Engineer review how the ABCWUA uses its water.

Leslie Weinstock, also of the Agua es Vida Action Team, explained that the action team is primarily a watchdog group. She went on to note that there are unregulated chemicals contaminating Albuquerque's water supply, and while the ABCWUA employs federal Environmental Protection Agency standards, those standards are outdated. Ms. Weinstock went on to say that the public has some right to know what is in its drinking water. Reports detailing specific levels of contaminants are no longer available. She acknowledged that local entities have tried to address contamination levels in the Rio Grande, but treatment methods leave too many chemicals in the water, suggesting a need for more advanced treatment methods. Ms. Weinstock said that Santa Fe employs membrane technology, which is better suited to filtration

of pharmaceutical and similar contaminants. She also addressed plans to store water in aquifers and other water and watershed management issues.

Questions and comments from the committee included:

- the amount and radioactive levels of waste associated with SNL;
- the progress of contamination from SNL's landfill and whether it is already contaminating ground water;
- the potential importance of underground water quality monitoring to determine the progress and severity of ground water contamination;
- the willingness of federally funded entities to pay for cleanup of contaminated sites;
- the responsibility of involved parties to pay for assessments of ground water contamination levels; and
- the technological feasibility of assessing and mitigating ground water contamination in the Albuquerque area.

Mark Sanchez of the ABCWUA provided the committee with an update regarding concerns raised by the previous presenters. He explained that meetings had already been held to address recommendations made by various citizen groups, and while continued funding is necessary to implement many of the recommendations, the ABCWUA is aware of the concerns raised by the previous presenters. Mr. Sanchez emphasized that the ABCWUA is constantly working to meet safe water standards and that intake wells will be shut down if they present problems. He also pointed out that the Department of Environment is actually the regulatory authority in matters of water quality, and he noted the difficulty in determining the accuracy of monitoring data.

Mr. Sanchez also addressed plans to store water in aquifers, explaining that the ABCWUA is looking into the storage of water without the loss to evaporation usually associated with traditional storage methods. However, he pointed out that no plans exist to inject water into aquifers. Mr. Sanchez also noted that all data addressed in the previous presenter's comments are available to the public.

Barbara Gaston, compliance manager for the ABCWUA, said that there are laboratories at both ABCWUA facilities that collect and monitor water samples. She noted that ground water monitoring is regulated by the federal Safe Drinking Water Act of 1974 and that the mixture of ground and surface water that tends to be distributed to most people is a blend of water that is safe for everyone. Ms. Gaston went on to note that the ABCWUA does a significant amount of outreach to the community, and recent water test results were available in the committee's packet.

John Stomp, chief operating officer, ABCWUA, provided the committee with a brief overview of the ABCWUA's facility and design. He pointed out that various levels of water quality had been looked at by the ABCWUA, and various tests revealed that while high-quality water was available in most cases, assessments suggested that upstream processes could be added that could improve overall water quality.

Questions and comments by the committee included:

- the relationship between the ABCWUA and federal entities and the ability of the ABCWUA to demand cleanup of water contaminated by federal entities;
- the effectiveness of public meetings to address water contamination issues;
- the accountability of the ABCWUA to other government and nongovernment entities;
- the response of the ABCWUA to jet fuel contamination of the ABCWUA's ground water resources;
- that the response of the ABCWUA to ground water contamination is to shut wells down, but the contamination plume continues to grow; and
- the removal of source contaminants might not stop the spread of pollutants into the ground water supply.

The chair acknowledged several members of the public who addressed the issue before the committee. Several members of the public identified themselves, but others did not. All of them expressed concern regarding potential contamination of Albuquerque water resources, mostly due to the KAFB fuel spill and the lack of action from state and federal government officials.

After the public comment portion of the meeting, the committee toured the ABCWUA facility.

There being no further business for the day, the committee recessed at 5:00 p.m.

Friday, November 9

Healthy Foods Initiative

Pam Roy provided the committee with an overview of the Farm-to-School Program. She explained that the program involves local school districts buying locally grown produce to provide more fresh fruits and vegetables for school meals, pointing out that the program has grown significantly in its first few years. Ms. Roy also pointed out that recent federal regulations require additional produce for school meals.

Antony Wagner of Wagner Farms explained that he recently became involved in the Farm-to-School Program but that his farm has been supplying local schools with fresh fruits for about three years. He said demand from local schools has steadily increased over the past few years, and he would be able to plant additional crops if more school districts committed to buying from his operation.

Questions and comments from the committee included:

- the extra costs associated with providing local produce to school districts versus federal requirements;
- that new requirements could create additional opportunities for local produce growers;

- the requirements that allow some growers to keep crops in storage for several months while other growers must deal with shorter windows of freshness;
- the value of locally grown produce over processed foods; and
- the potential health benefits of re-emphasizing fruits and vegetables over processed foods in the diet of school-aged children.

Report on *Tri-State Generation and Transmission Assn., Inc. v. D'Antonio*

DL Sanders, general counsel for the Office of the State Engineer (OSE), provided the committee with an overview of the recent New Mexico Supreme Court decision involving the OSE's defense of its Active Water Resource Management (AWRM) rules. He began by providing the committee with a review of the development of the legislation considered by the supreme court. Mr. Sanders explained that by 2002, ongoing drought conditions resulted in water struggles that led to repeated priority calls by the OSE, which would curtail the water rights of water users who held rights less senior than those of other users. In an attempt to address the concerns of all water users, the legislature passed a bill during the 2003 session directing the OSE to develop rules addressing the administration of water rights.

Mr. Sanders explained that lawsuits were filed challenging the OSE's authority to promulgate such rules. He said that the New Mexico Supreme Court, in considering the case, tied a number of water cases together and affirmed the OSE's authority to administer water rights in the absence of a final adjudication of those rights in accordance with the rules it had promulgated.

Professor Reed Benson, University of New Mexico School of Law, said he thought that the legislature made a difficult policy call in passing the 2003 law that called for the water management rules, which the courts eventually upheld. Mr. Benson explained that the statute indicates that the legislature thought it was necessary for the OSE to adopt such rules because "the adjudication process is slow, the need for water administration is urgent, [and] the need for compliance with interstate compacts is imperative . . .". Section 72-2-9.1 NMSA 1978. Mr. Benson said he thought the supreme court's ruling in *Tri-State* was faithful to the legislature's specific direction to the state engineer. He also noted that the AWRM rules do not dictate that juniors be cut off in times of shortage but, rather, authorize replacement plans that encourage water users to develop local solutions for voluntary water sharing. However, he noted that good policy and good implementation of policy can be two different things.

The committee had a lengthy discussion about the issues raised by Mr. Sanders and Mr. Benson.

Minutes

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

Review of Proposed Legislation

A bill addressing funding for farmers' markets was endorsed by the committee.

A memorial endorsing reauthorization of federal funding for the Rio Grande Environmental Management Program was endorsed by the committee.

A bill addressing the procedure for authorizing replacement wells was endorsed by the committee.

A bill for funding the Healthy Initiatives Farm-to-School Program failed to be endorsed due to lack of a quorum.

D There being no further business, the committee adjourned at 12:00 noon.

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