

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

November 9, 2020
Video Conference Meeting

The third meeting of the Water and Natural Resources Committee was called to order by Representative Derrick J. Lente, co-chair, on November 9, 2020 at 9:04 a.m. The meeting was held by telephone and video conference via an online platform.

Present

Rep. Derrick J. Lente, Co-Chair
Rep. Matthew McQueen, Co-Chair
Sen. Joseph Cervantes, Vice Chair
Rep. Gail Armstrong
Rep. Christine Chandler
Rep. Joanne J. Ferrary
Rep. Angelica Rubio
Rep. Larry R. Scott
Sen. Benny Shendo, Jr.
Rep. Melanie A. Stansbury
Sen. Jeff Steinborn
Sen. Mimi Stewart
Rep. Candie G. Sweetser
Sen. Pat Woods

Advisory Members

Sen. Roberto "Bobby" J. Gonzales
Rep. Susan K. Herrera
Sen. Linda M. Lopez
Sen. Gerald Ortiz y Pino
Sen. Nancy Rodriguez
Rep. Patricia Roybal Caballero
Rep. Tomás E. Salazar
Sen. Antoinette Sedillo Lopez
Sen. Elizabeth "Liz" Stefanics
Sen. Peter Wirth

Absent

Rep. Abbas Akhil
Rep. Paul C. Bandy
Sen. Craig W. Brandt
Sen. Sander Rue
Rep. Nathan P. Small
Rep. James R.J. Strickler

Rep. Anthony Allison
Sen. Pete Campos
Rep. Jack Chatfield
Rep. Randal S. Crowder
Rep. Candy Spence Ezzell
Sen. Gregg Fulfer
Sen. Ron Griggs
Sen. Stuart Ingle
Sen. Gay G. Kernan
Rep. Tim D. Lewis
Rep. Tara L. Lujan
Rep. Javier Martínez
Rep. Rodolpho "Rudy" S. Martinez
Sen. Steven P. Neville
Rep. Greg Nibert

Sen. Mary Kay Papen
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Rep. G. Andrés Romero
Rep. Debra M. Sariñana
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James G. Townsend
Rep. Martin R. Zamora

Minutes Approval

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

Staff

Shawna Casebier, Legislative Council Service (LCS)
Jeret Fleetwood, LCS
Sara Wiedmaier, LCS
Pam Stokes, LCS

Handouts

Handouts and other written testimony are in the meeting file and on the legislature's website at www.nmlegis.gov.

Monday, November 9

Climate Impacts on New Mexico and Policy Recommendations for Achieving Executive Order Climate Targets (9:05 a.m.)

Sarah Cottrell Propst, secretary, Energy, Minerals and Natural Resources Department (EMNRD), and co-chair, New Mexico Interagency Climate Change Task Force (NMICCTF), and James C. Kenney, secretary, Department of Environment (NMED), and co-chair, NMICCTF, provided an update of the NMICCTF's progress implementing Executive Order 2019-003 on addressing climate change and energy waste prevention and the work that remains to be done. The update is based on the NMICCTF's 2020 Climate Strategy Report released in October.

Brenda Ekwurzel, Ph.D., director, Climate Science, Climate and Energy Program, Union of Concerned Scientists (9:21 a.m.), shared how climate impacts are creating consequences for lives and livelihoods, and ultimately the economy, of New Mexico. Noah Long, director, Western Region, Climate and Clean Energy Program, Natural Resources Defense Council (NRDC) (9:31 a.m.), described a multi-stakeholder modeling effort that the NRDC is a part of on greenhouse gas emissions and emissions reduction strategies for the state and a high-level overview of expected results of the model. Rama Zakaria, senior manager, Regulatory Policy and Analysis, Environmental Defense Fund (EDF) (9:43 a.m.), discussed New Mexico's progress

on reducing climate emissions, emission projections from the EDF's analysis and how to close the emissions gap. The handouts for the presentation can be found here:

<https://www.nmlegis.gov/Committee/Handouts?CommitteeCode=WNR&Date=11/9/2020&ItemNumber=1>.

Answers to questions and comments from committee members followed the presentation (9:51 a.m.) and included the following.

- Agency rules relating to reducing emissions pursuant to the executive order are still under review.
- Fifty-three percent of greenhouse gas emissions in New Mexico come from the oil and gas sector, based on 2018 state data.
- To address what the state could do for underrepresented communities, the state could change the "no more stringent than the federal government" requirement in the Air Quality Control Act so that the NMED could be more protective of those communities, as well as increase both the NMED's and the EMNRD's budget to allow those departments to hire more staff. The EMNRD sought a grant from the United States Climate Alliance for staffing to work on equity and inclusion over the next year.
- The federal Coronavirus Aid, Relief, and Economic Security Act, also known as the "CARES Act", provided money to the EMNRD and the Economic Development Department related to the transition to renewable energy, and those agencies have coordinated to receive that funding for new positions between the departments. The EMNRD's position will be specific to economic diversification and clean energy.
- Proposed rules that would have exempted entities that emit less than 15 metric tons of volatile organic compounds have received many comments, and the NMED is committed to reviewing those rules.
- In regard to the effect on air quality that may be attributed to the slowdown in oil and gas activity due to the coronavirus disease 2019 (COVID-19) pandemic, while the NMED currently has only two air inspectors in the state, it has partnered with the Environmental Protection Agency's (EPA's) Dallas office and performed flyovers in the state. Preliminary data show that there have been more equipment leaks and more emissions in 2020 than in 2019. As for impacts on water, discharges to surface waters are primarily handled out of the EPA's Dallas office and not something that the NMED has authority over pursuant to the federal Clean Water Act, but the NMED is seeking to study and rectify that in an upcoming legislative session. The EMNRD noted that while rig count is down, oil production is approximately where it was in March. The EMNRD also has resource restraints on inspectors, which is one reason that the draft proposed rules on preventing methane waste focus on data collection, especially in the first year.
- Responding to a comment that it is useless to not have enforcement authority of rules, Secretary Kenney stated that there is nothing like an increase to the budget, which

- would allow him to plan over multiple fiscal years; otherwise the secretary has to hire staff contingent on sufficient departmental revenue. Any settlements and penalties collected by the NMED revert to the general fund.
- Responding to a question regarding supplanting wood heating with electric heat pumps, Mr. Long responded that while there is no suggestion to eliminate wood heating in homes, efficient electric heat pumps can be cost-effective for homes and provide significant climate benefits. He said that he is not aware of any technology to sequester carbon directly at the wood burning stove, but that the biggest opportunity in that cycle is in forest practices. A follow-up comment was made that some houses are not wired for electric heat and may not have the meter loop large enough for electric heat; the cost runs into thousands of dollars, which would be asking a lot for poor people to do.
 - A member stated that the state needs a comprehensive strategy to address the state's carbon footprint, and New Mexico has the potential, through the reforestation of forests and sustainable agricultural practices, to increase its carbon sequestration. Such a strategy will require a sustained effort, deployment of reforesting tools and deployment of the best tools for a sequestration program.

Decarbonization Policies (10:28 a.m.)

Cris Moore, professor, Santa Fe Institute (SFI); Jessika Trancik, associate professor of energy studies, Massachusetts Institute of Technology; and Seth Blumsack, professor of energy and environmental economics and international affairs, Department of Energy and Mineral Engineering, Pennsylvania State University, presented a recently completed report from a workshop held at the SFI in February 2020 that was attended by experts from all over the country and that focused on and was inspired by decarbonization policies in New Mexico and the region. The handouts for the presentation can be found here:

<https://www.nmlegis.gov/Committee/Handouts?CommitteeCode=WNR&Date=11/9/2020&ItemNumber=2>.

Answers to questions and comments from committee members followed the presentation (11:16 a.m.) and included the following.

- Ms. Trancik stated that the "technology" as used in the presentation is very broad and can include not just hardware but new institutions, new business models and so forth. In response to whether New Mexico has the technology needed to achieve net zero emissions by 2050, Ms. Trancik responded that the state has a lot of the technology needed to cost-effectively reduce emissions substantially in New Mexico and elsewhere, from 10 percent to 40 percent, but that there are still innovation needs and opportunities to ensure that New Mexico can reduce emissions to zero. The process has been jump-started and needs to continue, but there is also the opportunity to allow for greater energy access and to grow jobs. We can get a good part of the way there, and she is confident that the targets that have been set can be met.

- In response to a question as to whether any work has been done on community choice aggregation to accelerate the use of renewable energy and embrace innovation that could come by turning to the marketplace, Mr. Blumsack stated that those elements, including community solar, can be very effective tools for putting choices in the hands of communities. These tools can build engagement and result in more equitable outcomes. In the context of larger economy-wide decarbonization goals for the power grid, the tools can be part of the portfolio and a way to match consumers in certain communities. Mr. Moore stated that it is important to lower the barriers to renewables and allow smaller scale installations, but it is also important to have large-scale installations if the state wants to decarbonize quickly at the lowest cost possible.

Update on the SunZia Transmission Project (11:31 a.m.)

John Ryan, executive director, SunZia, provided an update of the SunZia project to install transmission lines in the state to carry wind-generated power to western power markets. The lines are expected to be in operation by 2024. Jeremy Turner, director, New Mexico Project Development, Pattern Energy Group LP (Pattern) (11:44 a.m.), the anchor tenant for SunZia, described Pattern's portfolio of projects throughout the world and investment in wind energy in New Mexico. Handouts for the presentation can be found here:

<https://www.nmlegis.gov/Committee/Handouts?CommitteeCode=WNR&Date=11/9/2020&ItemNumber=3>.

Answers to questions and comments from committee members followed the presentation (11:51 a.m.) and included the following.

- In response to a question about private landowners concerned about rights of way for transmission lines on their property, Mr. Ryan responded that SunZia does not have eminent domain authority and must negotiate with property owners. A majority of landowners are happy with the leases negotiated with them, and it is important to have support from landowners regarding the location of the right of way on their property. Some landowners want transmission lines on their property and some do not, and the presenters work with those who want the lines to avoid interrupting important aspects of whatever landowners are doing with their land. It is helpful for landowners to recognize that these projects benefit not only the local community but also the state and the region with the clean energy that is being developed, which is important for climate change. It is important for clean air and renewable energy, which are supported by transmission lines.
- When asked if there is something the legislature needs to do to make the Renewable Energy Transmission Authority (RETA) more effective or more responsive, Mr. Ryan stated that the RETA needs continued funding to help developers with the extended time that it takes to build transmission lines. Mr. Turner stated that from his standpoint, the RETA has been critical to Pattern's success.

- Responding to a concern that different projects are treated differently in regard to appearance before the Public Regulation Commission (PRC), Mr. Ryan stated that the processes differ depending on whether a project goes through federal land and whether the project is subject to the federal National Environmental Protection Act process. SunZia hopes to get through this new process due to a change in the route in a few years.
- A member expressed that the multiplicity of review or oversight is problematic, as is RETA's power of eminent domain, and having public meetings is different from having public input.
- A member asked if it would be beneficial to manufacture wind turbines in the state, and Mr. Turner stated that it would be incredibly helpful to have them manufactured here to reduce shipping costs alone. The presenters have spoken with some manufacturers, and it is understood that manufacturers need a pipeline of approximately 10,000 megawatts to locate in a state; they need to have a clear path that there will not just be a couple thousand megawatts built. The only way that can be done is with more transmission.

Community Solar (1:13 p.m.)

Senator Stefanics; Representative Roybal Caballero; Paul Biderman, J.D., working group facilitator, and retired director, Institute of Public Law, University of New Mexico (UNM) School of Law; Beth Beloff, executive director, Coalition of Sustainable Communities New Mexico; Mayane Barudin, interior west manager and tribal liaison, Vote Solar; and Pilar Thomas, partner, Quarles & Brady LLP, provided an update on the goals and objectives of the working group created by Senate Memorial 63 (2020) to review and develop recommendations for statewide community solar initiatives that result in a sustainable and scalable market-based program for the state. The handout for the presentation can be found here:

<https://www.nmlegis.gov/handouts/WNR%20110920%20Item%204%20Community%20Solar.pdf>.

Answers to questions and comments from committee members followed the presentation (1:31 p.m.) and included the following.

- When asked if a bill is really needed to accomplish community solar since similar projects have already occurred with Kit Carson Electric Cooperative, Inc. at the Pueblo of Picuris and at the El Rito campus of Northern New Mexico College, Ms. Beloff stated that utilities and cooperatives have the ability to create solar cooperatives, but in most cases they have opted not to provide community solar, and without legislation, it is at the whim of the utility to decide to go forward with it. This legislation would provide assurance that community solar can happen. Ms. Thomas said that while the Pueblo of Picuris has been able to build a project with Kit Carson, the project was a one-off negotiation in which over one year was spent negotiating the terms of integrating and connecting that system. The benefit of

community solar legislation is that everyone will play by the same rules, and every community that wants to do a community solar project will not have to worry about negotiating terms with their utility. It also provides certainty for developers.

- Community solar legislation should ensure that low- and moderate-income families will have access to community solar and electricity itself.
- The role of the PRC has not been mapped out in the draft bill yet, but there was indication in the survey that the group would want the PRC to develop a method for allocating participation within the annual cap, and that they would have something to say about the bill credit mechanism to ensure no cross-subsidization and the carve-out for low-income individuals.

Creating a Statewide Environmental Database (2:01 p.m.)

Judy Calman, director of policy, Audubon New Mexico, introduced the panel members and stated that their agencies' goal is to centralize the state's basic environmental data on to a single, map-based website that will be easily searchable by agencies, industries and the public. Dr. Esteban Muldavin, director, Natural Heritage New Mexico, Biology Department, UNM, and Rayo McCollough, emeritus information manager, Natural Heritage New Mexico, Biology Department, UNM (2:05 p.m.), gave an overview of the database, how they see it working and the goals of a proposed environmental database act. Joe Weber, information manager, Virginia Natural Heritage Program, Virginia Department of Conservation and Recreation, made a presentation on the state of Virginia's database that is maintained and used for conservation planning, environmental review, land protection, ecological management, education and outreach. Handouts for the presentation can be found here:

<https://www.nmlegis.gov/Committee/Handouts?CommitteeCode=WNR&Date=11/9/2020&ItemNumber=5>.

Following the presentation (2:26 p.m.), when asked by a committee member what is so sensitive about this data that it would have to be behind a confidentiality wall, Mr. Weber advised that one of the main reasons is that some of these species are collected illegally. If collectors knew where they were, they might go out and collect them for trade, making them very vulnerable. Ms. Calman stated that the Historic Preservation Division of the Cultural Affairs Department also had concerns about confidential data and that work is being done to include a clause in the draft legislation to protect confidential information.

Implementing the Federal Great American Outdoors Act, Utilizing the Federal Land and Water Conservation Fund and Proposing Mechanisms to Establish Dedicated Statewide Conservation Funding (2:32 p.m.)

Mike Sullivan, senior advisor, Office of United States Senator Martin Heinrich, provided an overview of the federal Great American Outdoors Act, which establishes the federal National Parks and Public Land Legacy Restoration Fund to address a significant "deferred maintenance backlog" at five federal agencies and fully funds the Land and Water Conservation Fund from energy development on public lands and waters at no cost to taxpayers. Conor Hall, director,

Conservation Strategies, Policy, Advocacy and Government Relations for the Intermountain West, Trust for Public Land (TPL), described the TPL's efforts to help the state think through different options for dedicated statewide conservation funding. Handouts for the presentation can be found here:

<https://www.nmlegis.gov/Committee/Handouts?CommitteeCode=WNR&Date=11/9/2020&ItemNumber=6>.

Answers to questions and comments from committee members followed the presentation (2:57 p.m.) and included the following.

- The update to the 2009 New Mexico Statewide Feasibility Report from the TPL will be available by the middle of 2021.
- When asked for thoughts after reviewing the information, Mr. Hall responded that the TPL is seeking input from all groups involved, but initial thoughts include the issuance of a general obligation bond, which has been successful in the past; a rededication of the sporting goods sales tax that has been very successful recently in Georgia and Texas; or the imposition of a real estate recording fee or real estate transfer tax. Every state is different, but all of these options have some level of feasibility.

Approval of Minutes (3:04 p.m.)

On a motion made, seconded and duly passed, the minutes of the September 3, 2020 meeting were approved as submitted.

Report on the Strategic Water Reserve and the New Mexico Unit Fund (3:04 p.m.)

Rolf Schmidt-Petersen, director, Interstate Stream Commission (ISC); Hannah Riseley-White, Pecos River Basin manager, ISC; and Ali Effati, water resources manager, ISC, presented reports on the Strategic Water Reserve and the New Mexico Unit Fund. The handout for the presentation can be found here:

<https://www.nmlegis.gov/handouts/WNR%20110920%20Item%207%20Interstate%20Stream%20Commission.pdf>.

Public Comment (3:52 p.m.)

Comments from members of the public included the following.

- Bob Wesley, speaking on behalf of a House Memorial 1 (2017) working group and the Middle Rio Grande Water Advocates, voiced his concerns about the consequences of an imminent Rio Grande Compact violation on the Rio Grande and recommended that the committee monitor steps that the state engineer and the ISC will be taking to avoid a compact failure in the end of 2021 or 2022. The state engineer may have to make some difficult decisions to curtail some water uses on the Rio Grande.

- Norm Gaume stated that climate change demands two different sets of actions. Many of the presentations to the committee today focused on the first: mitigation or reduction of greenhouse gas emissions. We must also adapt to reduce use of water supplies. The Middle Rio Grande Water Advocates requests that committee members, as elected leaders, take actions to increase New Mexico's water supply resilience and prioritize the changes that must be made to face the state's water problems, guided by hydrologic reality and the need for equitable solutions.

Executive Session (Closed to Public): Update on *Texas v. New Mexico* (3:56 p.m.)

The committee went into executive session to discuss ongoing litigation.

Adjournment

There being no further business before the committee, the meeting adjourned at 4:46 p.m.