

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

**September 18-19, 2008
Pueblo of Isleta Casino, Ballroom A/Belen Public Library**

The fourth meeting of the Water and Natural Resources Committee (WNRC) was called to order by Representative Andy Nuñez, chair, at 9:13 a.m. on Thursday, September 18, 2008, in Ballroom A of the Pueblo of Isleta Casino.

Present

Rep. Andy Nuñez, Chair
Rep. Paul C. Bandy
Rep. Elias Barela
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Joseph Cervantes (Sept. 19)
Sen. Dede Feldman
Sen. Mary Jane M. Garcia (Sept. 18)
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy (Sept. 18)
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Don L. Tripp

Advisory Members

Sen. Vernon D. Asbill (Sept. 19)
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Ben Lujan (Sept. 19)
Rep. James Roger Madalena
Sen. Cisco McSorley
Sen. Leonard Lee Rawson (Sept. 18)
Sen. Nancy Rodriguez
Sen. John C. Ryan (Sept. 19)
Rep. Henry Kiki Saavedra (Sept. 18)
Rep. James R.J. Strickler
Rep. Peter Wirth (Sept. 19)

Absent

Sen. Phil A. Griego, Vice Chair
Sen. Clinton D. Harden, Jr.
Sen. Cynthia Nava
Sen. Steven P. Neville

Sen. Rod Adair
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Danice Picraux
Rep. Eric A. Youngberg

Guest Legislators

Rep. Andrew J. Barreras

Sen. Michael S. Sanchez (Sept. 19)

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

Staff

Gordon Meeks

Jon Boller

Aldis Philipbar

Mark Harben

Guests

The guest list is in the original meeting file.

Thursday, September 18

The meeting began with the introduction of the legislators, who were then welcomed to the Pueblo of Isleta.

Welcome to Pueblo of Isleta

Governor Robert Benavides welcomed the committee to the Pueblo of Isleta and stressed the importance of water to the way of life, customs and religion of the tribe. He said that the river flows below the diversion dam are essential to the pueblo's religious practices. He also said that water plays an important economic role by allowing for the growth of crops. Governor Benavides said he and the other pueblos are concerned about the future of agriculture and the diminishing river flow through the lands. He noted that municipalities are acquiring pre-1907 surface water rights formerly used for irrigation and transferring those rights into ground water wells. Water that was once only used during the irrigation season is now being pumped all year long. In addition, the City of Albuquerque and the City of Santa Fe will soon begin diverting the San Juan-Chama Project water directly out of the Rio Grande, and there does not seem to be a plan in place or any consideration given to downstream senior irrigators.

Pueblo of Isleta Water Issues

John Sorrell, director, Water Resources Department, elaborated on some of the concerns stated by Governor Benavides. He said that there are already depletions to the Rio Grande immediately above the pueblo from municipal pumping, and he is concerned these depletions will increase with the San Juan-Chama Project. The state does require municipalities to offset pumping impacts on the river system, but the intent is to provide year-end accounting to Texas. He said he is also concerned about the growing change from surface water irrigation rights to municipal ground water rights. In addition, he said there appears to be confusion about who has the authority to administer agricultural water deliveries. Mr. Sorrell said the state could do more to ensure that there are real-time (during the irrigation season) offsets on river flows to mitigate the effects of downstream to upstream transfers of water rights. He also said that the state could

do more to ensure proper monitoring and enforcement when surface rights are transferred away from formerly irrigated farmlands.

The panel then answered questions related to the following:

- how would one transfer surface rights to ground water rights? Filing an application; placing an ad in the paper stating the intention to transfer surface rights to ground rights; in the Middle Rio Grande (MGR), surface rights can be retired and changed to ground water rights;
- plants are not as healthy because of a decrease in water quality; and
- is the official position of pueblo to protest all transfers of water rights? It does not protest all transfers; it evaluates, transfers and decides from there.

Greg Ridgley, deputy chief counsel, Office of the State Engineer (OSE), said that any proposed change in diversion would be evaluated by the OSE to determine impairment to other water rights owners. Owners are allowed to protest and, if there are protests, a hearing will be held. He added that the law requires notice to be published in a public paper, but does not require specific notification. It was suggested that the law be changed to automatically notify tribes. Bill Hume, Office of the Governor, said that six MRG pueblos have contacted the governor expressing concern and that the office met with them on two occasions. Further questions included:

- what effect do bosque fires have?;
- silt is built up seven to eight feet at diversion dams, which could mean trouble if there is a big storm;
- fire provides a temporary solution to invasive species, but the best solution is to go in and remove them;
- wastewater plant effects on water in the Rio Grande;
- salt cedar issues;
- there is not enough money for adjudications;
- the arsenic standard was amended for the pueblo to meet Environmental Protection Agency (EPA) standard; and
- *City of Albuquerque v. Browner*: supreme court upheld pueblo's right to set own standard.

Deep Water Regulation

Mr. Ridgley explained the OSE's authority over ground water and its general jurisdiction. He said that Sections 72-12-25 through 72-12-28 NMSA 1978 limit the OSE's authority over deep saline water.

John Romero, director, Water Resources Allocation Program, OSE, presented the committee with a map of the deep water wells in the state and said that most are located in Bernalillo and Sandoval counties. Mr. Romero said that there are 178,400 acre-feet of water in the deep wells. He added that Albuquerque typically uses about 100,000 acre-feet per year, Rio Rancho uses 11,000 acre-feet per year and Santa Fe uses 10,000 acre-feet per year.

Mr. Ridgely then reviewed Senate Bill 262, which was developed with the Governor's Office. He said the bill addresses the concern that large amounts of ground water are being developed without the OSE. He said that the bill does not include oil and gas produced water. Mr. Hume added that he does not know whether the administration will reintroduce the bill. He said that it depends on the stakeholders and the potential for consensus.

The panel then answered questions from the committee related to:

- all ground water in the state belongs to the public and is subject to beneficial use;
- do wells impact basins? Is there any monitoring of potential impacts?;
- deep aquifers can impair other deep aquifers;
- mapping aquifers is essential to understanding resources and managing them correctly;
- is there technology available to map parameters and depth of deep aquifers?;
- no knowledge of the extent of deep aquifers exists;
- technology exists to seal upper aquifers to prevent commingling;
- all drilling is required by law to seal shafts to prevent commingling of water; and
- if commingling exists naturally through aquifers, then aquifers are not considered isolated.

Water Availability for Land Development

John Wortman, New Mexico Farm and Livestock Bureau, said that if one wants to be able to grow food in this country, one has to make decisions to make that possible. He said that eminent domain, clean water and the federal Endangered Species Act all affect agriculture. Mr. Wortman noted that three-fourths of people want their food grown locally (in the United States) and the committee should think about how their decisions will impact agriculture.

John Longworth, OSE, discussed statute requirements and Water Use and Conservation Board (WUCB) protocols. He said that there are five types of subdivisions defined by statute ranging from 500 or more parcels of land to 24 or less. Certain subdivisions are required by law to show whether the subdivider can fulfill the maximum annual water requirements of the subdivision. Mr. Longworth said that the WUCB review protocols are based on statute and county regulations and include a water demand analysis and water availability assessment. The review also includes domestic wells and a geo-hydrology report for ground water. Mr. Longworth noted some of the water availability challenges for subdivisions, including public water suppliers rescinding old commitments and extraterritorial zones and county and municipal authority.

Mr. Wortman and Mr. Longworth answered questions from the committee related to:

- New Mexico not being in favor of reopening the Colorado River Compact;
- thoughts on specific proposals that might make small farming more economically viable — if each generation did not have to buy the farm and address workers' compensation issues;
- the need to encourage marketing of New Mexico agricultural products;

- law passed last session that would allow farmers who conserved water on their land to keep that water. Has that gone forward; have there been any applications for that; have any regulations developed? Law has not been acted on, development of rules and regulations is in the process (meeting next week);
- there is more awareness now; people want to buy local; and
- if the state makes a decision that it is going to develop, then the state needs to make sure it has that water indefinitely because if it does not, the water will come from agriculture.

Working Lunch

Funding for Regional Water Plans Updates

Terese Uliyarri, city councilor, City of Belen, told the committee about projects going on in her community. She said that the city will be asking for \$400,000 to update regional water planning statewide. Michael Benson, program specialist, Water Management Branch, Navajo Nation, said that the Navajo Nation has participated in regional water planning since 1982, calling it a success story. He said that the Navajo Nation is currently working on a water line from Farmington to Shiprock. Mr. Benson added that when there is a plan, needs can be more clear and a solution can be found.

Tom Bates, vice chair, Gila/San Francisco Water Commission (GSFWC), discussed his role as the southwest regional water planning manager, where he oversaw the coordination of the Southwest Regional Water Plan. After moving from a memorandum of understanding (MOU) to a joint powers agreement, the name was changed to the GSFWC. Mr. Bates said that the water commission's primary responsibility is to put the 14,000 acre-feet Central Arizona Project (CAP) water to beneficial use. He also said that per the governor's policy, the commission is considering alternatives other than diversion to make up for the shortfall between water availability and water needs in the southwest region. Mr. Bates said that the water plan is lacking in some areas due to gaps in the information on which the plan was written. He added that the GSFWC strongly supports the allocation of annually budgeted funds to update regional water plans. He also said that the GSFWC would like to use some of that money to dedicate to research and investigations that would fill in the information gaps. He said that the GSFWC is now a lesser player. The overall decision-making body is the Stakeholders Group and it wants up-to-date information. The GSFWC is seeking legislative allocations to complete the studies required to make a sound decision as to how to use the 14,000 acre-feet of water and to meet federal and state requirements as to the contract with the secretary of the interior for the water.

Brent Bullock, acting superintendent, Pecos Valley Artesian Conservancy District, said that it started its regional water plan in 1991, but many things in the plan have not been implemented because of the Pecos Water Settlement Agreement. However, he said that one good thing that came out of it was the spirit of cooperation. Jesse Boyd, attorney, said that if the constitution were followed, the pueblo, Hispanic, Mexican and territorial acequias and ditches that are the foundation of New Mexico's cultural identity would have their water rights protected first and foremost. He said that hydrographic surveys should contain all relevant information,

not just that information the OSE thinks is important. He said that since there are very few final decrees in the state, the OSE has been unwilling or unable to administer rights by priority, leaving senior rights with no remedy when they are impaired in times of shortage.

Consuelo Bokum, board president, New Mexico Water Dialogue, said that there are many reasons to provide funding for water plan updates. She said that water plans are like annual business reports. They allow a region to report on its water "financial" accounts, available water supply, demand, stored water and growing demand and drought. She said that water plans need to be updated in order to monitor progress and deal with new problems as they emerge. She said that water plans also need to be updated so that those water projects that appear in completed regional water plans can be given extra weight in the selection process for money from the Water Trust Fund.

River Ecosystem Restoration Initiative

Marcy Leavitt, Department of Environment (NMED), said that the New Mexico River Ecosystem Restoration Initiative (RERI), a multiagency initiative to restore ecosystems in the state, was implemented in 2007 as part of Governor Richardson's Year of Water. It includes 12 statewide projects that were awarded a total of \$2.5 million. The projects were selected through a robust, competitive request for proposal process. She said that all the projects included monitoring and education/outreach plans to facilitate long-term sustainability. Contractors include federal and state governments, tribes, nonprofit organizations and an irrigation district. She added that \$2.8 million was appropriated in 2008 and they have received 30 proposals totaling \$8.02 million. She said that the long-term activities have left many river ecosystems with significantly impaired ecological and physical functions. She added that the loss of aquatic habitat has been a major component of the fish species imperilment. Ms. Leavitt said that the NMED is working with river ecosystem stakeholders statewide. She said that the RERI complements the NMED's Clean Water Act and wetlands programs and aligns with the NMED's performance goal of addressing impaired stream miles through watershed restoration projects to improve surface water quality.

Karen Menetrey, Surface Water Quality Bureau, NMED, discussed the upcoming New Mexico watershed forum *From Mountain Top to River Bottom: Restoring New Mexico's Watersheds* on September 30 through October 2 at the Albuquerque Uptown Marriott. She said the forum provides the opportunity for residents to network and share challenges and innovations. She said 270 people are expected at the forum.

The panel then answered questions from the committee related to:

- how 2008 projects that will be approved in the next month have four years to be completed;
- one 2007 project has been completed;
- the watershed forum is open to the public for a \$130 registration fee;
- one proposal for MGR in 2007, but the project was not selected; and
- one MGR project being recommended for 2008 and one in San Juan.

Tour of Isleta Lakes, Isleta Habitat Restoration Project, Isleta Diversion Dam and Los Lunas Silvery Minnow Refugium

The committee was taken on a tour by Mr. Sorrell and Estevan Lopez, director, Interstate Stream Commission.

The committee recessed at 5:30 p.m.

Friday, September 19

The meeting was called to order at 9:14 a.m. by Representative Nuñez at the Belen Public Library. On a motion made, seconded and unanimously approved, the minutes from the July meeting were adopted.

Albuquerque Bernalillo County Water Utility Authority (ABCWUA) and Surface Water Project

Mark Sanchez, executive director, ABCWUA, said the ABCWUA was established in June 2003 by the New Mexico Legislature. The operation is funded through user rates, fees and charges. He said that new residential developments are required to use only 180 gallons per household. Mr. Sanchez said that the Rio Grande does not resupply the aquifer; thus, the San Juan-Chama Water Project was created. Mr. Sanchez discussed the water resource management strategy (WRMS) that was updated in 2007. New policies were established, including an update through 2060. He then discussed components of the conservation program, which includes utility reduction and drought management. He said the conservation program began in 1994 with the goal of reducing water usage by 30 percent in 10 years. By 2004, the program achieved a 33 percent reduction, or 177 gallons per capita per day (GPCD). By 2007, the program achieved 167 GPCD and he said they are on track to meeting the 150 GPCD target by 2014. Mr. Sanchez also said that many old, manually read meters only captured 50 to 60 percent of actual water usage, but the new automated meters are about 98 percent accurate. The new meters have been put into use in the last three years. He said that reuse sources include 400 acre-feet from industrial wastewater, 3,000 acre-feet from surface water and 2,800 acre-feet from municipal wastewater. Mr. Sanchez then moved on to aquifer storage and recovery projects. He said that the Bear Canyon Arroyo Pilot Project provided 500 acre-feet storage during a three-month period in 2008 and that planning is underway for a second larger demonstration project to be located at the new surface water treatment plant. He said that all 44 miles of pipeline for the San Juan-Chama Water Project have been constructed and are operational. He added that the surface water treatment plant is scheduled for completion in September 2008 and delivery of water from this project to ABCWUA customers is scheduled to begin by December 2008.

John Stomp, water resources manager, City of Albuquerque, said that when designing the treatment process, the city had to look at the current quality of water. He said that the water treatment plant uses chemical and physical processes. The process starts with ponds that separate out particles, then a coagulant is added and rapid mixing and flocculation are used to promote settling and smaller particles are removed. Ozone is added to disinfect and granular-activated carbon filtration removes impurities. Chlorine and fluoride are added before the water

is sent out.

Mr. Sanchez added that the cheapest water is the water that already exists. He said that the state uses less water today than it did a decade ago, which proves that conservation is real. He also said that most systems lose 20 to 40 percent of their water in distribution due to leaks, etc., but this system loses only 10 percent. He said that a conservation standard for municipalities and counties would go a long way in saving water.

Mr. Sanchez, Mr. Stomp and Deanna Archuleta, chair, ABCWUA and commissioner, Bernalillo County, answered the following questions from the committee:

- ozone is a very strong disinfectant, but it does not last very long in the system;
- ultraviolet light can be used, but it is not as strong as ozone;
- chlorine is required because it is long lasting;
- what is the formal authority of the ABCWUA when other counties are using the same aquifer?;
- the interconnectedness of all basins is the focus of a project of the University of New Mexico Law School;
- eminent domain provision in water authority statute;
- the water code gives eminent domain authority all along the water system, which gives it the ability to protect itself;
- the ABCWUA is the only statutorily created water authority; other areas are working on creating their own authority;
- all municipalities have authority to purchase water rights, but no ability to transfer them;
- work on the wastewater plan and participating in the storm-water plan;
- request for lease-back information;
- the EPA lowered arsenic levels from 50 parts per billion to 10 parts per billion;
- Albuquerque must be in compliance by January;
- the standard has reduced the amount of water available; it is a very stringent standard;
- required posting on web site of how much water is being diverted and how much is being put back;
- problems with deep wells;
- the ABCWUA strongly supports giving the OSE authority;
- environmental concerns with disposal of byproduct of drilling in deep wells;
- 60,000 to 70,000 acre-feet of water is lost due to seeping, transport, etc.;
- current per capita use is 164 gallons per person per year;
- SunCal gets its water from the ABCWUA;
- SunCal must pay for the net cost of water;
- the ABCWUA is only committed to serving 4,000 acres of the 55,000 acres of SunCal; there are contingency plans to provide up to 900,000 people with water;
- what are fees and charges that produce revenue?; and
- maintain \$10 million reserve.

Active Water Resource Management Rules; Implications for Senior Water Rights

John D'Antonio, state engineer, summarized Section 72-2-9.1 NMSA 1978 and the history of active water resource management. He also discussed the pending court case in the court of appeals. He said that September 29 is the deadline to respond to five amicus briefs. A decision is anticipated in spring 2009. He said that the OSE has established 90 percent of the water master districts. Currently, 24 water masters are employed around the state. Mr. D'Antonio said that progress is being made. He said that the variable supply of water and the growing population create a need for active water resource management and that management gives the state the ability to continue economic development while still conserving resources.

Sunny Nixon, Rodey Law Firm, discussed the lawsuit brought against the OSE. She said that the regulations were faulty in not giving water rights owners due process. She said that the district court held that the regulations were unconstitutional due to a violation of separation of powers and due process. Ms. Nixon said that several irrigation districts have filed amicus briefs. She said that the clear language of the statute gave authority to the OSE to administer, not to determine, water rights.

A.J. Olsen, Hennighausen and Olsen, said that the Pecos Valley Artesian Conservancy District (PVACD) filed the first amicus brief in the lawsuit during the appeals process. He said that there are questions about whether active water resource management undermines the terms of the Pecos settlement. He said that the PVACD has been adjudicated so rights have been established. Mr. Olsen said that the water adjudication court order appointed a water master for PVACD and the OSE regulations infringed on that court order. He said that part of the adjudication required metering. He added that the adjudicated rights of the owner should be protected and not subjected to administrative processes that could revoke those rights.

Paula Garcia, New Mexico Acequia Association, said she agrees that the OSE cannot administer water rights in an adjudicated water district. She said that acequias have been managing water resources for hundreds of years and their concerns include:

- schedules: water masters do not take into account water needs for different crops;
- water master authority over diversion amounts; and
- protocols.

She said that there is a question of priorities for the legislature. She asked whether appointing water masters is a good idea. She also said that there is a double standard when it comes to priority administration; for example, individual junior water rights versus cities with junior water rights.

Steve Hernandez, Hubert and Hernandez, said that conflict spurs effective water policy. He said that exemptions to priority rights for junior water rights holders (wells and municipalities) violate the constitution. Mr. Hernandez said that managing water is not enforcing priorities.

Mr. D'Antonio said that the OSE has not promulgated basin-specific rules and regulations. He said the OSE is concerned about the cost of adjudications and accountability of

water users.

The panel then answered questions from the committee related to:

- how the OSE is interpreting law in a way not intended by the legislature;
- how the OSE has only promulgated a general framework of rules and regulations; all details will be spelled out in a finished product, can be tweaked to accommodate certain areas and would restrict outdoor use but not consumptive use for domestic wells;
- judicial decisions must be honored; they cannot be usurped with administrative regulations;
- taxpayers carry the burden to pay for water masters;
- consider leasing before adjudication; and
- the point of contention is not whether metering is good: it is what is the cap, who decides the cap, what is the water master's role, etc.

Lunch at the Whitfield Wildlife Conservation Area

Charlie Sanchez, Jr., Valencia County Soil and Water Conservation District, said that all water rights issues are important, but they need to be handled correctly. He said that the conservation area consists of 100 acres that used to be a dairy, but the water was alkaline so the family donated the land to the conservancy with the stipulation that it be used as a wildlife conservancy to promote education.

Middle Rio Grande Conservancy District (MRGCD)

Gary Perry, chair, said that the MRGCD was created in 1925 as a political subdivision of the state. The MRGCD is governed by a seven-member elected board of directors. Board members serve four-year terms with elections every two years. Mr. Perry said that the conservancy district encompasses 277,760 acres and 150 river miles. He said that approximately 70,000 acres are actively under irrigation. The MRGCD also includes the six MRG pueblos. He said the MRGCD runs on an annual operating budget of \$23.2 million and has 197 full-time employees. Mr. Perry discussed the current issues facing the conservancy district, including urbanization, bosque management, endangered species, water conservation, water management and water rights. He said that in the future, the MRGCD plans to continue expansion of gauging network and automation structures and to continue emphasis and refinement of scheduling and rotation practices, various large-scale efficiency projects and levee reconstruction.

Bill Turner, MRGCD, discussed the potential for the ABCWUA to condemn MRGCD water rights and deep wells. He asked the committee to support the OSE authority enhancements. He said that investors want to pump water out of the San Augustine plains and that this application argues it will compensate for depletions of the ABCWUA. He also said that there is concern over the MRGCD's water bank program. Eugene Abeyta, MRGCD, added that there is concern with people who have sold water rights still using the water and urban residents demanding use.

Mr. Perry, Mr. Turner, Mr. Abeyta and Augusta Meyers then answered questions from the committee, including:

- does pre-1907 inventory of the MRGCD coincide with the state?;
- original well depth was 2,500 feet; it is now 3,000 feet;
- what is the actual percentage of rates and funding that comes from non-irrigated versus irrigated areas?;
- what benefits do non-irrigators get? Drainage, flood control;
- rail protection;
- efficiency in water distribution, how can water from irrigation canals be measured? There are no measuring devices on canals, which is a problem;
- Is there a way to know if someone who has not paid assessment is still getting water? Ditch riders have logs, not a tool to measure how many acre-feet of water was used. They can say water was used for this amount of time on this many acres;
- confusion about the MRGCD's purpose;
- Senator Tito Chavez's 1995 bill to change the mill levy;
- relations between the MRGCD and other agencies and organizations; and
- how has water use been cut in half? Improved efficiencies of diversion operations.

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

Water Rights Adjudication Subcommittee

The Water Rights Adjudication Subcommittee was called to order by Senator Mary Kay Papen, chair, at 4:00 p.m. in the Belen Public Library.

Parameters for Middle Rio Grande Adjudications

Ernest Coriz, Pueblo of Santo Domingo, summarized the various legal doctrines for Indian water rights. He discussed prior and paramount rights that were adjudicated in World War I. He said that newly reclaimed lands were created under a conservancy district. He also added that it was the one-hundredth anniversary of the "Winter's Doctrine" that resulted from a lawsuit with Montana. Mr. Coriz said that the federal government argued that when Indians were put on reservations, water was reserved also. He said the date of the treaties became the priority dates of "federal reserved rights". He added that 19 pueblos were not created by federal reserved rights, but by Spanish land grants protected by the Treaty of Guadalupe Hidalgo. Today, three of the four diversions are on pueblo land.

Lawrence Gutierrez, Coalition of the Six MRG Basin Pueblos, said that land grants are recognized as senior water rights, but Native Americans see inherited rights as senior. He said that the pueblos' locations are based on the availability of water and that unknowns in legislation cause concern about dilution. Mr. Gutierrez said that something needs to be done to protect the pueblos' usage. He added that adjudications could take decades, but what happens in the interim?

Tom Turney, consulting engineer, said that there are 55,000 to 66,000 irrigated acres within the MRG versus 45,000 to 55,000 irrigated acres to be retired to satisfy

dedication/retirement permits. He said that the Lower Rio Grande (LRG) adjudication should have been finished in 2005 and that money thrown into hydrographic surveys is not going to be effective or efficient. Mr. Turney said that the top-down approach of the OSE will not work either, and he encouraged the OSE to work more closely with MRGCD. He said that any criteria that will work has to be set up cooperatively between the MRGCD and OSE. He added that movement of water rights from below the MRGCD to above results in local impairments, and said that as acreage is reduced, assessment costs to remaining irrigators increases.

Jesse Boyd, attorney, said that a lack of priority administration makes New Mexico water law meaningless and ineffective. He said that the 1907 framers expected reasonably efficient adjudications. Mr. Boyd encouraged people not to be afraid of adjudications. He said that adjudications are unavoidable and that delays will only make them more expensive. He added that with the proper process, senior water rights can be protected during the adjudication by order of the court. He encouraged perpetual jurisdiction in adjudication court. He said that the law recognizes pre-existing rights, but that law is not being followed. Senior users will be the most protected as long as that law applies. He also encouraged the subcommittee to end blind devotion to a final decree, follow Colorado's example and adjudicate the oldest rights first.

Chuck DuMars, Law and Resource Planning Associates, discussed the basic operative facts of adjudications, stating that a water rights suit does not clarify title to the land, it just clarifies the "right to use" and clarifies location. He said that maps of the MRGCD are used in most transfers of land title. He added that assessments based on use are available. He proposed a new approach in which everything is neutralized. He suggested housing water rights records in a neutral depository. Mr. DuMars said that determining the duty of water is a scientific effort and asked whether it should be in the legal, adversarial process or if it should be a neutral, collaborative process. He suggested moving hydrographic surveys, record keeping and duty of water into neutral administration and said that priority dates could be performed as historical research out of the judicial hegemony.

Judge Jerald A. Valentine, presiding judge, LRG adjudication, said that any changes in the statute have to be made before the MRG adjudications start because no changes can be made in the middle of the adjudications. He said that the purpose of adjudications is to gather information for the OSE. Without that information, the OSE cannot properly supervise public water. He added that the title for water rights is an inherent part of the process. He said that if the legislature decides to change the water code, some form of verification process will still be needed. Judge Valentine said that most water rights claims pre-date the water code, resulting in over appropriation. He added that the record is the permit issued post-1907 but no record is necessary for pre-1907 rights and that the verification process is the key. He said that the current water code is not fatally flawed, but could use some tweaking.

In response to comments made by Mr. DuMars, Mr. Ridgley said that the special characteristics of the MRG were spot on, but the underlying comments of taking some duties away from the OSE and transferring them to some more neutral authority show a misunderstanding of the way the water code works. He said that any suggestion that there could be a better system by creating a new authority would only result in the same misconceptions.

Mr. Hume added that the MRG is blessed because it has a lot of technical data and detailed maps.

The panel then answered questions from the subcommittee related to:

- priority is determined during adjudication;
- part of the issue with current adjudications is they start with the largest rather than the oldest; and
- pueblos want more water than what they were using in historical times, so it has to come into current law to come up with a settlement.

There being no further business, the subcommittee adjourned at 5:45 p.m.