

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

**August 1-2, 2017
Student Union Building, New Mexico Highlands University
Las Vegas**

The second meeting of the Water and Natural Resources Committee was called to order by Senator Joseph Cervantes, chair, on August 1, 2017 at 9:30 a.m. in the Student Union Building at New Mexico Highlands University in Las Vegas.

Present

Sen. Joseph Cervantes, Chair
Rep. Bealquin Bill Gomez, Vice Chair
Rep. Matthew McQueen, Vice Chair
Rep. Gail Armstrong
Rep. Paul C. Bandy
Rep. Randal S. Crowder
Rep. Derrick J. Lente
Rep. Rodolpho "Rudy" S. Martinez
Sen. Cliff R. Pirtle (8/2)
Sen. Sander Rue
Rep. Nathan P. Small
Sen. Jeff Steinborn (8/1)
Sen. Mimi Stewart
Rep. James R.J. Strickler
Rep. Carl Trujillo
Sen. Pat Woods (8/1)
Rep. Bob Wooley

Advisory Members

Sen. Craig W. Brandt
Sen. Pete Campos
Sen. Carlos R. Cisneros
Rep. Sharon Clahchischilliage
Rep. Harry Garcia (8/1)
Rep. Larry A. Larrañaga
Sen. Linda M. Lopez (8/1)
Rep. Sarah Maestas Barnes (8/1)
Rep. Bill McCamley (8/1)
Sen. Gerald Ortiz y Pino (8/1)
Rep. Debbie A. Rodella (8/2)

Absent

Sen. Benny Shendo, Jr.

Rep. George Dodge, Jr.
Rep. Rebecca Dow
Rep. Brian Egolf
Rep. Candy Spence Ezzell
Sen. Ron Griggs
Rep. Yvette Herrell
Sen. Stuart Ingle
Rep. D. Wonda Johnson
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. Rick Little

Rep. Tomás E. Salazar

Rep. Javier Martínez
Sen. Cisco McSorley
Sen. Steven P. Neville
Rep. Greg Nibert
Sen. Mary Kay Papen
Sen. Nancy Rodriguez
Rep. Angelica Rubio
Rep. Patricio Ruiloba
Sen. William E. Sharer
Sen. John Arthur Smith
Sen. Peter Wirth

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

Staff

Jon Boller, Legislative Council Service (LCS)
Shawna Casebier, LCS
Jeret Fleetwood, LCS
Maria Alaena Romero, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony can be found in the meeting file or on the New Mexico Legislature's website at www.nmlegis.gov.

Tuesday, August 1

Call to Order and Welcome

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

Dr. Sam Minner, president, New Mexico Highlands University, welcomed the committee and provided an overview of New Mexico Highlands University. He emphasized that the school focuses on affordability, social mobility and engagement in learning for its students.

Questions and comments from the committee included:

- enrollment declines track with declines in the rural population in New Mexico; and
- Dr. Minner is working to address concerns raised regarding accreditation for the college.

Drinking Water Supply Challenges in Rural New Mexico

Robert Kirk, hydrologist, Department of Water Resources, Navajo Nation, provided the committee with an overview of the Navajo-Gallup Water Supply Project, noting that construction of the water system has already generated about 900 jobs in the area. The system is designed to serve a population of 250,000, including the city of Gallup, Navajo Nation communities in New Mexico and Window Rock, Arizona, and the southwest area of the Jicarilla Apache Nation, he said. The project is 40 percent complete, with completion expected by December 2024. The project appropriation ceiling in 2017 dollars is \$1.135 billion, he explained, with \$50 million coming from the state.

Arianne Singer, deputy general counsel, Office of the State Engineer (OSE), also provided the committee with a brief overview of the project. She explained that it is the largest drinking water project in New Mexico and one of the largest in the United States. Ms. Singer noted that the state's funding is being used for the city of Gallup's water supply and that the state will have met its funding obligations once it is credited with its expenditures on the pipelines constructed using state funds.

Bill Conner, executive director, New Mexico Rural Water Association (NMRWA), provided the committee with an overview of rural and public water systems in New Mexico, noting that of the 1,095 public water systems in the state, 85 percent of them serve populations of 500 or less. Mr. Conner noted that all water and wastewater systems face challenges, such as aging infrastructure and changing requirements for compliance with safety regulations, emphasizing that those challenges are often amplified for smaller, rural systems. He went on to discuss training and technology issues facing rural systems. Mr. Conner also discussed potential future challenges, such as maintaining adequate cash flow and reserves to cover both day-to-day operations and emergencies.

Questions and comments from the committee included:

- the Navajo-Gallup Water Supply Project is not intended to supply agricultural water;
- 45.4 million gallons per day will be treated by the water system;
- many of the construction jobs for the water system will go to in-state contractors;
- about one-half of the residents of Navajo chapters still have to haul water from elsewhere;
- the NMRWA trains water system operators, but some New Mexico colleges also offer some programs;
- the San Juan-Chama Drinking Water Project is not part of the Navajo settlement;
- water will be supplied to the Window Rock area, but it will come from Arizona;
- the Navajo-Gallup project will be built to the state line; and
- the Navajo Nation is also appropriating funding for the project.

Department of Environment (NMED) Water Infrastructure Team Report and State Auditor Report on Water Infrastructure Funds

Timothy Keller, state auditor, and Sanjay Bhakta, deputy state auditor, outlined the functions of the Office of the State Auditor (OSA) and explained governmental, proprietary and fiduciary funds and fund balance reports, particularly for water-related infrastructure funds.

Auditor Keller began by discussing the basic functions of the OSA, including its constitutional authority, noting that there are 1,540 government entities submitting audits to the office.

Mr. Bhakta provided the committee with an overview of fund balance and net position classifications. He explained investment in capital assets and restricted and unrestricted net positions, noting that restricted net positions are those that have limitations placed on them by creditors, grantors, contributors, laws and regulations, as well as constitutional provisions, while unrestricted positions are neither restricted nor invested in capital assets.

Auditor Keller went on to discuss state agency fund balance reports, noting that the OSA has reviewed 431 funds of 91 state agencies and the state General Fund to better understand overall fund balance trends and to provide accountability and transparency. He noted that the main types of funds with significant remaining balances are unspent water-related infrastructure funds (totaling over \$512 million) and capital project balances (increasing since 2014 to about \$1.2 billion). Auditor Keller also pointed out that unspent water-related infrastructure balances continue to grow. He also identified several stagnant infrastructure funds, noting that while the legislature swept about \$900 million from various state funds, the governor vetoed about \$62 million of that money.

Michaelene Kyrala, NMED, noted that several executive agencies informed the governor that the legislature had swept too much out of their funds for them to be able to perform their necessary functions, which is why the governor vetoed some of the fund sweeps proposed by the legislature. Ms. Kyrala went on to discuss the NMED's formation of the Water Infrastructure Team (WIT), composed of representatives from various governmental agencies and nongovernmental organizations, and the team's initiatives. She noted that the WIT created several tools to help local governments manage their assets and identify potential funding sources. She also discussed a survey developed by the WIT to identify statewide water infrastructure needs and a public relations campaign called "The Value of Water". Ms. Kyrala also discussed some of the funding challenges the WIT has identified, such as the preference of most agencies to seek grants and capital outlay funding instead of securing loans for which they qualify.

Ms. Kyrala also provided the committee with a copy of the NMED's July 2017 Infrastructure Development Report, a publication of the department's Construction Programs Bureau. The report lists water, wastewater and solid waste projects administered by the bureau,

breaking them down by county and offering notes regarding each project's funding year, funding source, funding amount and status.

Questions and comments from the committee included:

- about \$300 million is available for wastewater funding, with authorized agencies also eligible for loans from the NMED;
- 20 percent of the \$300 million comes from state funds;
- a significant amount of the stagnant money identified by the OSA is actually federal money;
- funding for the Carlsbad brine well project was secured by the legislature changing the purpose of some unspent funds;
- the OSA does not have the staff to determine how much unspent money can be accessed;
- in the 1980s, the OSA began reviewing audits rather than auditing agencies; and
- the tiered audit structure means smaller entities require smaller, less costly audits, but the tiers could be better defined.

Acequia Project Funding and Water Rights Issues

Paula Garcia, executive director, New Mexico Acequia Association (NMAA), explained that acequias are centuries-old water delivery systems, noting that there are about 633 acequias in 20 New Mexico counties. Ms. Garcia highlighted the impact of acequias on New Mexico's agricultural industry, both in terms of livestock and crops. She also discussed funding for acequia projects, noting that a major concern of the NMAA is the short- and long-term solvency of the New Mexico Irrigation Works Construction Fund, which is being used for the operational expenses of the OSE and the Interstate Stream Commission. Other NMAA concerns included capital outlay reform, water rights adjudications, water rights transfers and the role of acequias in local water management decisions.

Ralph Vigil, chair, Acequia Commission, gave an overview of the makeup, function and history of the commission, which he pointed out is a separate body from the NMAA. The commission is tasked with advising the Interstate Stream Commission, the governor and the legislature on pending legislation, he said. He also discussed some of the funding concerns of the commission, such as bottlenecks that occur during the capital outlay process. Mr. Vigil pointed out that it is difficult for most small acequias to navigate the Water Trust Board application process. Other concerns raised by Mr. Vigil included recent distributions from the Acequia and Community Ditch Fund, water rights transfers that did not allow for sufficient time to protest and the expansion of wilderness areas into traditional acequia communities.

William Gonzales, a parciante on a local acequia and member of the Acequia Commission, discussed concerns of water users on the Gallinas River since the New Mexico Supreme Court's 2004 ruling on the Pueblo Rights Doctrine. He explained that since 2004, significant amounts of agricultural land have been taken out of production. Mr. Gonzales also

noted that water users are trying to come to an agreement with the City of Las Vegas to share water. He also asked the legislature to help area water users by improving the adjudication process and by funding critical water infrastructure projects.

Questions and comments from the committee included:

- there is no Native American representation on the NMAA, but the association does collaborate on issues relating to Native American water rights;
- as a result of the *Abeyta* settlement, acequias near Taos have benefited by receiving more water rights, but no additional money for infrastructure has been provided;
- transfer of one water right can affect water delivery for an entire acequia;
- funding for renovation of Bradner Dam;
- federal money available for water infrastructure projects, including an agreement New Mexico has to provide some funding through soil and water conservation districts;
- changes in archaeological clearances for acequia projects; and
- use of the New Mexico Irrigation Works Construction Fund for operations violates its intended purpose.

Resilience in New Mexico Agriculture Project

Heather Balas, president, New Mexico First, explained that New Mexico First is a nonprofit, nonpartisan public policy organization seeking to advance both research and citizen input in a number of policy areas. She also noted that New Mexico First partnered with the New Mexico State University (NMSU) Cooperative Extension Service to study agriculture in New Mexico and develop a plan for resilience in agriculture. Ms. Balas explained that such a plan was necessary for a number of reasons, including an aging population of farmers and ranchers; increasing pressure on limited water resources; increasing land and energy prices; and complex regulations. She went on to note that development of the agricultural resilience plan involved stakeholder input, a background report, development of an actual plan and feedback on the plan. Ms. Balas also discussed various approaches in other states and their results. She went on to discuss various components of the agricultural resilience plan.

David Kraenzel, NMSU Cooperative Extension Service, provided the committee with the parts of the agricultural resilience plan regarding the next generation of farmers and ranchers. He discussed various initiatives to help encourage more young and beginning farmers in New Mexico, including educational and financial assistance.

Ms. Balas also discussed land and water issues in encouraging more farming and ranching, such as improving the legal process surrounding water rights, watershed restoration and balancing the needs of both habitats and agriculture.

Mr. Kraenzel discussed the agricultural supply chain, which he explained would help tap agriculture's potential through export opportunities and increased revenue. He mentioned New

Mexico branding and verification, local food procurement and building capacity for food processors and distributors as examples.

Ms. Balas discussed agricultural economic viability, which she explained addresses the need to support and adopt regulations and programs that support agriculture. Examples she mentioned included workers' compensation and insurance, tax regulations impacting agriculture and agricultural leases and lending. She also discussed next steps for the agricultural resilience plan, which include a steering committee to oversee implementation of continued community involvement in the plan.

Questions and comments from the committee included:

- the need for better data on the economic impact of farmers' markets;
- the only United States Department of Agriculture meat processing facility in New Mexico is in Moriarty, which makes the supply chain somewhat complicated;
- overproduction and uncertainty in agriculture are largely driven by the weather, as a large hail storm can devastate entire crops;
- it can be less expensive to feed cattle in Kansas and Nebraska than in New Mexico;
- perceived competition between water conservation efforts and "use-it-or-lose-it" water rights in New Mexico;
- the shrinking sheep ranching industry in New Mexico;
- New Mexico First is happy to work with potential sponsors on bills regarding the report's recommendations, as well as seeking a message from the governor making bills germane to the upcoming session;
- agricultural businesses are typically high-risk and low-profit;
- loan repayment programs for farmers and ranchers;
- the importance of urban farming and K-12 education in cities on the importance of agriculture;
- there are about 43 million acres of farmland in New Mexico;
- crops in New Mexico have shifted from items such as watermelons and tomatoes to hay, wheat and corn;
- the increasing average age of farmers; and
- issues concerning water savings from conservation.

Minutes

On a motion made, seconded and passed, the minutes of the committee's June meeting were approved.

Recess

The committee recessed at 5:15 p.m.

Wednesday, August 2

Indian Water Rights Settlement Progress and Next Steps for the *Aamodt* Settlement

Ms. Singer began by explaining that the *Aamodt* water rights adjudication of the Nambe-Pojoaque-Tesuque (NPT) stream system, which, after 51 years, has been one of the longest-running federal cases, is nearing completion, with a final decree issued in July 2017. Ms. Singer thanked the legislature for its continued support of the process and discussed the settlement's major components, particularly as they relate to the state's obligations, which include implementation of the *Aamodt* settlement agreement and partial funding for construction of a regional water system. Ms. Singer pointed out that an appropriation of \$18 million must be made during the 2018 legislative session in order for construction to begin on schedule.

Phillip Perez, governor, Pueblo of Nambe, also began by noting that, after over 50 years of litigation, the final decree represents another step toward bringing the *Aamodt* case to a close. He noted that the settlement recognizes both the needs of northern pueblos for water to satisfy their permanent homeland needs, as well as the need for safe, reliable and secure water delivery for all area residents, both within and outside of pueblo boundaries. Governor Perez explained that the regional water system is the project at the center of the settlement and that the Pueblo of Nambe is working with federal, state and local governments to ensure that all of the analyses and designs required for the project are completed in a timely fashion.

Joseph Talachy, governor, Pueblo of Pojoaque, also noted that the final decree brings an end to decades of litigation. He acknowledged that there are some water quality concerns in the Pojoaque Valley, but said that testing water quality would begin soon.

Sandra Ely, project manager, Santa Fe County Utilities, Santa Fe County, provided the committee with a map of the proposed regional water system and a time line for the project and associated costs. She also noted Santa Fe County's support for the settlement and the regional water system. Ms. Ely explained that the settlement presents choices for domestic well owners, including allowing users to keep their wells and connect to the regional water system. She also discussed other benefits of the settlement, such as protection of pueblo water rights, ecosystem health and access to a safe, reliable source of water. Ms. Ely also noted the jobs and economic development that would come to the area with construction of the regional water system. She also pointed out that implementation of the settlement is far from complete, as state and county funding still needs to be secured before construction can begin on the water system in June 2018. Ms. Ely noted that a provision of the settlement requires the water system to be completed by 2024 or the parties will have to go back to court.

Josh Mann, Office of the Solicitor, United States Department of the Interior, informed the committee that Alan Mikkelsen, acting commissioner, Bureau of Reclamation, United States Department of the Interior, will host a public meeting on the settlement in August. Mr. Mann explained that in 2010, Congress authorized \$177.3 million in federal funds for the project but

that construction cannot begin until the state and county commit to funding their respective shares of the project.

Marcos Martinez, assistant city attorney, City of Santa Fe, explained that, although the city's role in the settlement is relatively small, the city has been an active participant in the settlement and has significant interest in the success of both the settlement and the regional water system. He also noted that the city owns 150 acre-feet of surface water rights on the NPT stream systems, which it uses to offset ground water pumping. Mr. Martinez also said that the city hoped that its Buckman Direct Diversion Facility could serve as a model for the diversion facility of the regional water system.

Questions and comments from the committee included:

- area boundaries for the NPT Basin;
- water rights in the NPT Basin are fully adjudicated and appropriated;
- closed-door negotiations of some parts of the settlement;
- some communities, such as Tano Road, Chupadero and Rio en Medio, will not be served by the regional water system;
- both Santa Fe County and the City of Santa Fe have no current plans to connect to the water system;
- adjudication is to determine water rights, not a quiet title action;
- the OSE used more than double the state average in determining how much water well users could pump under the settlement;
- notice provided from the OSE to well owners and other non-Native American water users regarding the settlement;
- Santa Fe County has committed some transferred water rights to the NPT Basin but also wants to retain some water right flexibility throughout the county;
- landowners are unable to build new homes until after the water system is built, which may be causing land to lose value;
- the state's total funding commitment is about \$45 million, and the legislature appropriating \$18 million during the 2018 session would count toward the total;
- additional costs to the state could include connecting users to the regional system, but only the \$45 million is required by the settlement;
- no additional water rights transfers are required to implement the settlement;
- the willingness of tribes to come to the negotiating table and the threat of a priority call have helped make the settlement successful;
- contractors for the regional water system construction are subject to the state's gross receipts tax;
- some older wells may pump more water than new ones under the settlement;
- there are no restrictions on pueblos being able to lease their water rights;
- the water system will operate under a joint powers agreement between Santa Fe County and the pueblos;
- fire suppression is also part of the regional water system; and

- the settlement was developed, in part, because parties recognized the futility of litigation.

***Aamodt* Settlement and Road Easement Issues**

John Fox, president, Southwestern Title and Escrow, provided the committee with an overview of the issues regarding county road easements on pueblo lands. He explained that the Bureau of Indian Affairs (BIA) has recently asserted that all Santa Fe County roads within the exterior boundaries of the Pueblo of San Ildefonso may be in trespass. Mr. Fox went on to note that, as a result of the BIA's assertion of trespass, title insurance companies will not underwrite policies to a property that does not have legal access to it without an exception to coverage of access. Such exceptions tend to be a red flag to lenders. He said that the situation has made it difficult for people to buy or sell property in the area. Mr. Fox went on to note that several meetings had already been held on the issue, and that while there have been somewhat productive discussions, no simple, concrete answer has been developed. He added that the issue exists for 500 to 700 parcels of land.

Dave Neal, Northern New Mexicans Protecting Land, Water, and Rights, read a letter from the Pueblo of San Ildefonso to Santa Fe County in which the pueblo asserts trespass on the county roads within its boundaries. He asked that the legislature not appropriate any additional funding for the *Aamodt* settlement until the issue has been resolved. Mr. Neal also suggested that the matter has already been resolved via the 1924 federal Pueblo Lands Act, amended in 1933, which he said provided access to private properties.

Beverly Duran-Cash, a landowner, also noted that people affected by the assertion of trespass cannot sell their lands, which has created a divide between Native American and non-Native American residents. She said that although residents of the NPT Basin are 80 percent non-Native American, most non-Native American residents were left out of the closed-door settlement negotiations. Ms. Duran-Cash explained that the Pueblo of San Ildefonso maintains that, per the settlement, it must own all rights of way in order to install water lines for the regional water system. She also raised concerns regarding water quality, noting that many wells in the basin are contaminated.

Mr. Neal said that a survey conducted by the Pueblo of San Ildefonso contained a number of mistakes. He also said that the water system needs further study, noting that some residents will not be served by it while many others will elect not to hook up to it.

Gregory Shaffer, an attorney for Santa Fe County, explained that the easement issue is largely a federal one but emphasized that discussions need to move forward. He also explained that it is the position of the Santa Fe County Board of County Commissioners that a recent meeting to discuss the easement issue did not violate the Open Meetings Act. Mr. Shaffer went on to note some of the benefits of the regional water system, such as its scalability and that hookups to the system will be covered by the state.

Questions and comments from the committee included:

- potential solutions to the easement issue are for congressional action or action by the BIA;
- the federal Pueblo Lands Act likely does not cover this issue;
- infrastructure for the regional water system will mostly be on Pueblo of San Ildefonso land;
- tribes are rarely appreciated for their contributions and sacrifices to the state;
- the process for the issue to work itself out could be a lengthy one;
- a similar issue has arisen with the Pueblo of Santa Clara, but the pueblo has been willing to participate in developing a solution;
- residents of the Pueblo of Nambe have been denied title insurance as well;
- Santa Fe County has initiated talks with other pueblos about potential issues that could threaten the settlement;
- Santa Fe County has articulated its stance in a resolution that states that it will not appropriate money to the settlement until this issue is resolved; and
- the *Aamodt* settlement is still somewhat fragile as these issues continue to arise and need to be negotiated.

Adjournment

There being no further business, the committee adjourned at 12:50 p.m.