

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

July 27-28, 2015
University of New Mexico-Taos
Rio Grande Hall, 120 Civic Plaza Drive
Taos

The second meeting of the Water and Natural Resources Committee was called to order by Senator Peter Wirth, chair, on July 27, 2015 at 9:30 a.m. at the Rio Grande Hall in Taos.

Present

Sen. Peter Wirth, Chair
Rep. Candy Spence Ezzell, Vice Chair
Rep. Paul C. Bandy
Sen. Joseph Cervantes
Rep. Randal S. Crowder
Rep. Dona G. Irwin
Rep. James Roger Madalena
Rep. Javier Martinez
Rep. Matthew McQueen
Rep. Andy Nunez
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr. (7-27)
Sen. Mimi Stewart
Rep. James R.J. Strickler
Sen. Pat Woods

Absent

Sen. Sander Rue
Rep. Jeff Steinborn

Advisory Members

Sen. Ted Barela (7-27)
Sen. Carlos R. Cisneros
Rep. Sharon Clahchischilliage
Sen. Lee S. Cotter (7-27)
Rep. Nora Espinoza
Rep. David M. Gallegos
Rep. Bealquin Bill Gomez
Sen. Ron Griggs
Rep. Jimmie C. Hall
Rep. Larry A. Larrañaga
Sen. Linda M. Lopez (7-27)
Rep. Bill McCamley
Sen. Cisco McSorley

Rep. Cathrynn N. Brown
Sen. Pete Campos
Rep. George Dodge, Jr.
Rep. Brian Egolf
Sen. Stuart Ingle
Rep. D. Wonda Johnson
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. Tim D. Lewis
Rep. Rick Little
Rep. Stephanie Maez
Sen. Steven P. Neville
Sen. Mary Kay Papen

Sen. Gerald Ortiz y Pino
Sen. Nancy Rodriguez
Rep. G. Andres Romero
Sen. John C. Ryan
Rep. Tomás E. Salazar
Rep. Bob Wooley (7-27)
Rep. John L. Zimmerman

Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James G. Townsend
Rep. Don L. Tripp

Guest Legislator

Rep. Roberto "Bobby" J. Gonzales (7-28)

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

Staff

Jon Boller, Legislative Council Service (LCS)
Gordon Meeks, LCS
Jeret Fleetwood, LCS
Erin Bond, 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 web site at www.nmlegis.gov.

Monday, July 27

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

Mario Suazo of the University of New Mexico (UNM)-Taos welcomed the committee to Taos and thanked the committee for coming. He provided the committee with a brief history and overview of UNM-Taos, noting that the school had recently purchased the civic center from the Town of Taos and will use the facility to house several health-related school programs.

Drought Status, Reservoir Levels, Outlook

David Dubois, state climatologist, provided the committee with an overview of New Mexico's drought status. He reviewed precipitation levels and temperatures for the past year, noting that while precipitation numbers suggest that the first half of 2015 has been unusually wet (the fourth-wettest on record for the first six months of the year), snowpack amounts have been relatively low, and in the northern and western mountains, temperatures have been above normal. Dr. Dubois explained that the low snowpack has been offset by higher-than-average rainfall in

many areas of the state. He went on to note that New Mexico's drought status has seen much improvement over the past two years, pointing out that the U.S. Drought Monitor classified over 93 percent of New Mexico under extreme or exceptional drought in 2013, while zero percent of the state was suffering that level of drought as of July 2015. Dr. Dubois cautioned that there had been some extreme precipitation in New Mexico recently, pointing to hail storms near Hatch and dust storms west of Las Cruces as examples. Finally, Dr. Dubois discussed the precipitation outlook for the rest of 2015, noting that tropical storm systems have helped contribute to New Mexico's increased precipitation and could continue to do so. He also said that the coming winter features a strong El Niño outlook, which usually suggests above-average snowfall.

Deborah Dixon, director, Interstate Stream Commission (ISC), provided the committee with a brief overview of the ISC, noting that the commission primarily focuses on New Mexico complying with 80 interstate water compacts. She also reviewed the major interstate water compacts to which New Mexico is party. Ms. Dixon went on to discuss issues related to drought conditions on the Colorado River, particularly how they affect California. She pointed out that California prematurely declared an end to the drought a few years ago and is now facing severe drought conditions that are forcing state water managers to take unprecedented steps to cut water use across the state. Ms. Dixon also discussed water levels in New Mexico's reservoirs, providing the committee with data regarding how full each reservoir was last year, how full each currently is and how much change each reservoir level has undergone over the past month. She also discussed reservoir levels in New Mexico basin-by-basin, providing the committee with data regarding each reservoir's level over the past 10 years. Finally, Ms. Dixon discussed water conditions in the Colorado River Basin, noting water levels in Lake Powell and Lake Mead. She also provided the committee with water level projection data for both lakes, noting that declining water levels, particularly at Lake Mead, are trending from the low end of normal conditions to shortage conditions.

Questions and comments from the committee included the following:

- the ISC will be holding a public meeting in August on issues related to its application for water on the Canadian River to listen to the concerns of area stakeholders;
- average rainfall is determined by combining observations of individual weather stations over many years;
- regional water plans, and eventually the state water plan, are in the process of being updated;
- Texas negotiated with New Mexico to hold additional water in Brantley Reservoir, and evaporative losses were accounted for in negotiations;
- New Mexico is entitled to about 11.25 percent of upper Colorado River Basin runoff, but the amount of water the state can consume from the Gila River (which is part of the lower Colorado River Basin) is yet to be determined by the Arizona Water Settlements Act and New Mexico's potential development of Gila River water;
- water levels in Lake Mead and Lake Powell may dictate operations in the upper Colorado River Basin if the upper basin states are required to deliver an average of 8.3

million acre-feet per year to the lower Colorado River Basin states, rather than just to refrain from diverting more than the percentage of flows allocated to the upper basin states in times of shortage;

- El Niño weather pattern is driven by Pacific Ocean water temperatures;
- the status of litigation on the lower Rio Grande;
- New Mexico entities receive Colorado River water via the San Juan/Chama project and have historically kept enough water in reservoirs to deliver the full amount allotted to each entity, but 2015 could be the first year that less than the full allotment is delivered;
- whether the U.S. Bureau of Reclamation will again release New Mexico's credit water stored in Elephant Butte Reservoir without the state's permission;
- the involvement of stakeholder groups in the development of regional water plans; and
- regional water plans should be completed by July 2016.

Water Supply Vulnerabilities Study

J. Phillip King, Civil Engineering Department, New Mexico State University, began by providing the committee with an overview of water and agricultural operations below Elephant Butte Reservoir, noting that the Elephant Butte Irrigation District (EBID) has increased the amount of surface water allotted to New Mexico irrigators to 11 inches per acre this year, up from less than three inches last year. He noted that Hatch Valley water users will be shut off at the end of the month, Mesilla users in mid-August, Mexico users in mid-September and El Paso users in mid-October.

Shaleene Chavarria, a student at UNM, began by providing the committee with data on snowpack levels across the western United States in spring 2015, noting that the basins that supply runoff to rivers in New Mexico are all reported to be less than 75 percent of the long-term average snowpack. She also discussed Rio Grande streamflow at the Otowi gauge from January through May, pointing out the decline in streamflow from March to May. Ms. Chavarria went on to compare the current drought in New Mexico with one occurring in the 1950s, noting that the current drought does not appear to be as severe as the one in the 1950s with regard to precipitation; however, temperature averages have been two to three degrees higher during the current drought. She also discussed streamflow forecast data, noting that errors in streamflow forecasts over the past few years have tended to overestimate predicted flow.

Peggy Johnson, New Mexico Bureau of Geology and Mineral Resources, New Mexico Institute of Mining and Technology, provided the committee with data regarding ground water vulnerabilities during drought. She began by discussing ground water withdrawals and depletions in Dona Ana County over the past 25 years, noting that about two-thirds of pumped ground water is actually depleted. Ms. Johnson also discussed geology as it relates to ground water in the lower Rio Grande Valley, noting the differences between the Rincon Basin, below Caballo Dam, and Mesilla Basin, closer to Las Cruces. She pointed out that the thick productive aquifer that exists in the Mesilla Basin is absent in the Rincon Basin, which suggests that most of the ground water is in the Mesilla Basin, especially near the Texas border. Ms. Johnson also

discussed how drought has affected ground water pumping in the Mesilla Valley since the 1950s drought. She showed the committee how pumping during the 1950s drew the aquifer down, while El Niño weather patterns after the drought recharged the aquifer somewhat. Ms. Johnson also showed the committee graphs showing that while ground water pumping during the 1990s followed a relatively predictable pattern of withdrawal and recharge, subsequent years have shown steady decline in aquifer levels and less predictable recharge patterns.

Janie Chermak, Department of Economics, UNM, provided the committee with additional testimony regarding the water supply vulnerabilities study. She began by noting that while recent precipitation may have restored a sense of optimism in the lower Rio Grande, the area has been plagued by drought for most of the last decade. She also noted that while the 1950s drought was worse in terms of precipitation deficit, higher temperatures and increases in consumption have made the effects of the current drought worse. Ms. Chermak went on to explain how drought conditions have a compound effect on both surface and ground water supplies, noting that surface flows are the largest source of ground water recharge and that reduced surface flows and the corresponding increase in ground water pumping to make up for shortages mean that current depletions will likely outpace the system's ability to provide an adequate water supply. She also pointed out that agriculture has historically been a huge component of the lower Rio Grande's economy; the industry is growing increasingly inflexible and unable to manage water shortages. Ms. Chermak recommended bringing water supply and demand into better balance; better integrating the management of surface and ground water; investigating means of reducing ground water pumping and artificially enhancing ground water recharge; and improving irrigation water management and conservation.

Dr. King concluded the presentation by emphasizing that the drought is not over yet and that the ground water deficit issue is far from resolved. He noted that there are natural controls to ground water pumping, but they have dire consequences, such as wells going dry. Dr. King noted that solutions must be creative and that no single approach will be enough.

Questions and comments from the committee included the following:

- will ground water access gradually lessen;
- can New Mexico adopt artificial ground water recharge policies to avoid a situation similar to California's drought issues;
- capturing storm water for aquifer recharge does not come close to equaling the amount of water produced by snowpack;
- the inaccuracy of characterizing agriculture as using 80 percent of the water in New Mexico, and the difference between diversion of water and consumption;
- evaluation of water available in aquifers is difficult because it is impossible to remove 100 percent of the water in an aquifer;
- it is difficult to calculate the number of farmland acres fallowed by EBID farmers, as some farmers reduce the number of times they plant a crop on the same acre or plant different crops that demand less water;

- the difference between paper water rights and "wet" water rights;
- some water rights are for water with salinity too high to be of use;
- regulatory barriers to aquifer recharge;
- real-time transfer of ground water rights may allow land to be fallowed more effectively;
- continuing development of desalination technology versus the cost of treating water; and
- continuation of the water supply vulnerabilities study will require a \$100,000 appropriation.

Taos Settlement Update — Funding and Implementation

Nelson Cordova, water rights coordinator for the Pueblo of Taos, began by explaining that the case that served as the foundation for the Taos water rights settlement brought up water-sharing issues that have existed in the Taos Valley for centuries. He also noted that tribes have historically not had a good relationship with the State of New Mexico but said that the Pueblo of Taos and other stakeholders, including the state, have tried to work out a settlement that is equitable for all Taos Valley water users. Mr. Cordova explained that the settlement process began with negotiations between the pueblo and acequia users, and he thanked Palemon Martinez of the Taos Valley Acequia Association for his role in bringing the pueblo and the acequias together. He also emphasized that while water rights settlements are not easy to negotiate, water users must all learn to live together.

Gilbert Suazo, water resources specialist for the Pueblo of Taos, explained that the settlement was a very complex process that began in 1969. He explained that all of the streams and rivers in the Taos Valley have been used by the pueblo at one point or another, but the pueblo has shared with non-Indian settlers over the years. Mr. Suazo noted that as disputes began to arise over use of water, agreements eventually developed. He pointed out that one of the keys to the current settlement is an area known as Buffalo Pasture, which he explained possesses strong cultural and spiritual significance for the pueblo. Mr. Suazo noted that Buffalo Pasture, which is a natural wetland, has also become important to non-native water users as it marks the beginning of the Taos green belt, an agriculturally fertile area. He said that protection of the pasture was difficult because of its complex hydrogeology and that several studies were conducted on how best to do so. Mr. Suazo closed by noting that in his testimony to Congress in support of the settlement, his theme was "Peace in the Valley".

Arianne Singer, Office of the State Engineer (OSE), thanked the legislature for its continued funding of the Taos settlement, noting that at this point, the state has met all of its funding obligations. She provided the committee with a summary of the settlement provisions, breaking them down into four categories:

- pueblo water rights, contract rights and forbearance;
- non-pueblo water right acquisitions and contract rights;
- a pueblo water development fund; and

- settlement-related projects and funding.

Ms. Singer noted that the settlement ensures the use of water for all Taos Valley users. She also discussed some of the funding issues for the settlement, explaining that money from the Tribal Infrastructure Project Fund (TIF) for the settlement had been authorized during the recently held special session. Ms. Singer also noted that the inter se process was under way, which provides parties a chance to voice objections to the settlement. She pointed out that federal funding is the last piece of the funding puzzle.

Floyd Lopez, town attorney, Taos, provided the committee with a time line for the settlement. He emphasized that the settlement is important to Taos, particularly because part of the settlement contains agreements by the pueblo to withdraw objections to some water rights transfers that have been pending since the 1990s. Mr. Lopez also discussed the use of settlement funds for new, deep wells to be drilled to offset the use of surface rights.

Mary Humphrey, an attorney representing 12 mutual domestic water consumers associations in the area, discussed the involvement of mutual domestic associations in negotiation of the settlement. She explained that a 2001 trial regarding the water rights of mutual domestic associations calculated the acre-feet differently for each mutual domestic association, but much of this issue has since been resolved by the settlement. Ms. Humphrey also noted that the settlement agreement addressed so-called "footprint transfers", which involve the transfer of water rights to mutual domestic associations. She said that the settlement has resolved many differences among the involved parties and has helped bring peace to the Taos Valley.

Rebecca Dempsey, an attorney representing the Taos Valley Acequia Association, explained that many of the oldest irrigators in the valley are right next to the pueblo and that disputes arose over whether some acequia uses actually predate some pueblo uses. She noted that it took decades to negotiate the settlement, but she added that it would most likely have taken longer to resolve all of the issues through litigation. Ms. Dempsey acknowledged that the settlement would not solve all of the Taos Valley's water problems, but she pointed out that it was never designed to do so. She also discussed some of the benefits of the settlement, including waivers of challenges to certain wells, waivers of protests to some water projects, establishment of clear duties for all Taos Valley water users and access for managers to acequias whose headgates are on tribal land.

Questions and comments from the committee included the following:

- \$88 million of a projected \$124 million in federal money for the settlement has already been received;
- \$12.7 million was appropriated during the 2015 special session in order to meet the state's funding obligation deadline laid out in the settlement;
- water from the San Juan/Chama project offsets some of the settlement's impact on the Rio Grande;

- funding for mutual domestic associations is to purchase and retire water rights;
- some new wells in the area will be mitigation wells to offset some surface water rights;
- some funding indirectly benefits the Pueblo of Taos by resolving a long-standing dispute over water in the Rio Lucero;
- the OSE does not benefit from funds earmarked for settlement purposes;
- other pending settlements in New Mexico include the Aamodt and Navajo settlements;
- other pueblos negotiating with New Mexico include Ohkay Owingeh, Laguna and Zuni;
- parties began to negotiate more seriously with one another once they ran out of other options;
- mediators to help negotiate the settlement were paid through state and federal funds;
- \$2 million of the \$12.7 million appropriation for the settlement came from the TIF, which may affect funding available for other tribal projects;
- some of the money from the TIF was specifically for Buffalo Pasture infrastructure;
- several other tribes and pueblos, including Santa Clara, Zuni and Jemez, lost funding for projects because TIF money was used for the settlement; and
- shortage sharing agreements, particularly for nontraditional water uses, have been worked out as part of the settlement.

Kit Carson Electric Cooperative Renewable Energy Program

Luis Reyes, chief executive officer, Kit Carson Electric Cooperative, Inc., began by providing the committee with an overview of the cooperative, noting that it features propane and telecommunications divisions. He explained that its renewable energy program involves two phases: one voluntary, where consumers buy solar and wind power from market arrays, and a second, where investors build solar arrays and the cooperative buys power from them. Mr. Reyes noted that there are currently solar facilities in Questa, at the old Chevron Mine site, and another just west of that, and one in Mora, which provide almost all of the daytime electricity north of Questa. He pointed out that Kit Carson mostly services smaller-than-average residences that consume power for lights and computers, rather than for air conditioning and other high-power uses. Mr. Reyes also said that Kit Carson is trying to market its renewable energy program to other communities, such as Angel Fire, Red River and Tres Piedras. He also went on to discuss the cooperative's energy portfolio, noting that it is currently four percent solar and nine percent wind energy. Mr. Reyes also said that the cooperative is seeking approval for a solar array project on the Pueblo of Picuris, which he said the pueblo would own and which could serve 100 percent of the pueblo's needs but would transfer energy over Kit Carson's lines. He went on to note that solar energy is becoming more desirable for both the cooperative and consumers, as the cost of solar infrastructure continues to come down at the same time consumers want more control over their energy supply, particularly in a community like Taos, which is mostly poor but tends to have shared values regarding solar energy. Mr. Reyes said that renewable portfolio standards tend not to affect the cooperative's decision-making so much as consumers and numbers do, pointing out that the cooperative will meet its 2020 renewable standards early.

Questions and comments from the committee included the following:

- propane costs in New Mexico are unpredictable, so Kit Carson uses several markets, mostly in New Mexico, to buy propane year-round, store it and sell it at a stable, published price;
- Kit Carson does participate in the Low Income Home Energy Assistance Program, but many consumers use wood for heat, which makes accountability difficult;
- one 1.2-megawatt solar array serves about 900 homes;
- solar panel financing is easier and cheaper than it was five years ago;
- Kit Carson maintains its grid integrity on days without sun by interconnecting its grid with Public Service Company of New Mexico's (PNM's), which will not be a problem until Kit Carson's profile includes much more solar;
- the life cycle for a solar panel tends to be about 25 years, and Kit Carson is getting a longer cycle with better performance, though the panels will degrade over time;
- Kit Carson charges about eight cents per kilowatt/hour for daytime solar, which is close to PNM's cost;
- many variables regarding the cost of energy are beyond the cooperative's control, such as Federal Energy Regulatory Commission decisions;
- at some point, the cooperative may seek a legislative remedy regarding regulatory treatment of community solar projects;
- Kit Carson is currently trying to opt out of its contract with Tri-State Generation and Transmission Association, which is set to expire in 2040, in part because Tri-State's rates have doubled since Kit Carson signed on to the contract;
- the cost of sharing a solar array depends on the cost of the array and how it was financed;
- Kit Carson has prior purchase agreements with six solar operators, each with a different escalator clause;
- use of solar energy may have long-term economic development benefits by helping attract companies that may want to use 100 percent solar energy;
- wind energy is cheaper than solar, but the Taos area does not have enough wind to sustain it;
- the largest commercial Kit Carson customers are the Mesa Vista Consolidated School District and Taos Ski Valley;
- Kit Carson serves customers in Taos, Ute Park, northern Española, El Rito, Pilar and Las Trampas;
- Kit Carson began its fiber broadband network by using it on power lines to connect substations, then tied in to schools and will use a \$65 million grant to get fiber into every home;
- four contractors are currently working to connect homes;
- broadband access costs customers \$39.99 per month; and
- Kit Carson hopes that telecommunications and propane sales will help it stabilize its electricity rates.

Tuesday, July 28

Renewables, Rates and Electric Utility Infrastructure

Jon Hawkins, PNM, described PNM's integration of renewable energy into its existing electric infrastructure. He began with an overview of PNM's renewable energy portfolio, noting that the company is on track to meet the goal of 15 percent of its total portfolio by the end of 2015, pointing out that PNM has invested about \$270 million in solar energy. He also discussed PNM's other renewable energy projects, particularly wind and geothermal. Mr. Hawkins went on to discuss the challenges of incorporating renewable energy into the existing power grid. He explained that electricity produced must be balanced with electricity consumed on a second-by-second basis and showed the committee graphs detailing the variability of both wind and solar energy. Mr. Hawkins also noted the difference between peak energy load and base load, pointing out that while utilities must build their grid and generation based on peak load, rates are still based on base load. He went on to discuss the company's prosperity energy project, which is a smart grid storage demonstration project paid for by a U.S. Department of Energy grant and PNM customers. Mr. Hawkins explained that the project is designed to smooth solar intermittency and shift solar energy for delivery during peak hours. He went on to discuss other challenges presented by increased use and integration of solar energy, including grid management, cost recovery and grid modernization.

Keven Groenewold, executive vice president and general manager, New Mexico Rural Electric Cooperative Association, also discussed integration of renewable resources. He began by providing the committee with an overview of rural electric cooperatives in New Mexico, noting that they serve about 80 percent of the state's land mass but only about 25 percent of its population. Mr. Groenewold noted that cooperatives face different challenges than PNM does, mostly due to the sheer number of miles between co-op customers. He went on to explain that integrating renewable energy into the rural electric cooperative system should maintain or enhance the reliability and affordability of the existing operations and service. He also discussed cost recovery of investments made in distribution infrastructure and how fixed charges should balance the customer costs between distributed generation members and non-distributed generation members.

Regina Wheeler of Positive Energy Solar discussed the development of solar energy in New Mexico, explaining that the key drivers of solar development are cost, technology and consumer choice. She noted that New Mexico is able to generate and sell solar energy at a cost relatively competitive with other, more conventional sources. Ms. Wheeler also pointed out that New Mexico ranked in the top 10 states for new solar panel installations in 2014, which helped Positive Energy Solar double its work force from 40 employees to 80. She also discussed challenges associated with continued solar energy development in New Mexico, such as transmission, unplanned outages, environmental concerns and security issues.

Questions and comments from the committee included the following:

- potential problems with having too much solar energy on the grid;
- it is difficult to predict when New Mexico may start to develop problems similar to those experienced by other states;
- New Mexico needs to invest in grid modernization;
- balancing cost recovery with cost to consumers;
- the legislature can help utilities by encouraging them to take on more risk and to invest in new technologies;
- a new battery developed by Tesla is an example of how technology is going to continue to get better and cheaper as more consumers use it;
- PNM received some federal money for solar grid modernization;
- subsidies used to be necessary for solar energy to work for consumers, but several subsidies have already disappeared and the solar market continues to grow;
- community solar projects allow consumers who cannot afford the up-front costs of solar panels to subscribe to a solar facility;
- starting salaries for employees at solar energy companies begin at about \$13.00 an hour, but quickly grow to about \$20.00 an hour;
- site locations for solar facilities;
- PNM's cost to generate solar energy versus the cost of energy from the San Juan generating station; and
- steps the legislature can take to encourage advances in solar energy storage.

Decoupling and Integrating New Technology into the Grid

Noah Long of the Natural Resources Defense Council provided the committee with an overview of utility rate decoupling. He explained that decoupling first began decades ago in California both as part of an energy efficiency program and as a way to reconfigure the link between utility sales, rates and revenues. In short, decoupling eliminates the need for fixed charges for energy efficiency measures. Mr. Long explained that while decoupling does solve some problems, it does not force utilities to invest in an optimum mix of energy sources and is not a solution to the disputes over the value of solar energy rates paid by customers. However, Mr. Long noted that decoupling does ensure fixed-cost recovery by utilities. He went on to explain that traditional rate recovery structures involve establishing a rate based on anticipated sales and multiplying it by the amount of energy used to determine a customer's bill, which encourages utilities to focus mostly on sales. He pointed out that problems can arise for utilities when sales dip below an anticipated amount due to increased energy efficiency. Mr. Long said that decoupling involves annual rates determined by previous-year actual sales, not anticipated sales, which removes the need to sell more electricity to ensure recovery of fixed costs. However, he noted, a criticism of decoupling is that it can diminish a utility company's growth and profit and does not by itself sufficiently motivate companies to invest in energy efficient technology.

Ricardo Gonzales of El Paso Electric noted that almost all of his company's renewable portfolio comes from solar energy. He also said that the company is looking at integrating new

technology in phases and is working with New Mexico State University on storage and microgrid technology.

Questions and comments from the committee included the following:

- the Public Regulation Commission would be the appropriate body to pursue decoupling in New Mexico;
- California, Maine, Minnesota, Michigan, Oregon and Washington have all adopted decoupling; and
- PNM has supported decoupling, but also requested a fixed-charge proposal.

Protestant Standing in Water Rights Hearings

Senator Griggs explained that he had introduced Senate Bill 665 during the 2015 legislative session that addressed a number of water-related issues, including water rights hearings and protests, and he acknowledged that the interim would be a better time to discuss the individual components of that bill.

Jim Brockmann, attorney, Stein and Brockmann, P.A., began by reviewing water law in western states, noting that New Mexico is in relatively good shape because it acknowledges the interaction between surface and ground water. However, he said that the process of filing protests to water rights applications is beginning to be abused. Mr. Brockmann explained that even water rights applications that are not protested may cost applicants several thousand dollars, but they are still relatively simple and cheap. He said that protests can cause applications to take years and cost tens of thousands of dollars. Mr. Brockmann went on to explain that applications can be protested on the grounds of impairment to other users that they are contrary to the conservation of water in the state and that they are detrimental to the public welfare. However, he said that protests are no longer being used as they were intended, with some being filed as leverage against a business and some filed without any substantial content. Mr. Brockmann suggested that the protest process be streamlined, as outlined in Senate Bill 665, to limit the amount of time available for filing protests and to require protests to have substantial content, as well as to focus hearings on the content raised in protests and not on expanded subject matter. He said that allowing protests to be amended after 10 days makes the 10-day requirement pointless.

Connie Odé, attorney, Humphrey and Odé, P.C., said that changing protestant standing in water rights hearings will discourage public participation in a process that should encourage it by requiring that protestants provide evidence of their standing immediately upon protest. She explained that current OSE regulations already protect applicants who question protestant standing, noting that applicants can already challenge protestants' standing and the court can require them to come forward with proof of standing, which is consistent with state and federal court procedures in water cases. Ms. Odé also noted that the water code provides specifically that all parties may present evidence and argument on all issues, adding that limiting issues of standing in letters of protest is unrealistic, as some issues arise beyond simple impairment as

cases go on. She also said that threatening protestants with payment of an applicant's attorney fees and costs is unnecessary and merely intended to discourage protests.

Paula Garcia, New Mexico Acequia Association, echoed Ms. Odé's comments regarding public participation in the process. She explained that protests to water permit applications are an important part of the review process. Ms. Garcia also said that standing in the administrative hearing process is well-defined. She went on to note that administrative hearings are already a significant challenge for many protestants, who often have limited access to the kind of legal and technical resources required by many cases. Ms. Garcia noted that the proposed changes will shift the burden of proof for protests from the applicant to the protestant, and allowing for recovery of attorney fees will have a chilling effect on the kind of public participation that is embedded in the laws of New Mexico.

Questions and comments from the committee included the following:

- the proposed changes could turn current law upside down;
- district court hearings are an appeal of OSE administrative decisions;
- the OSE is interested in working with the parties involved on all sides of the issue to ensure a fair hearing process;
- the OSE has seen an interest in business and so-called leverage protests lately, particularly in one part of the state; and
- the importance of getting the language right in any statutory changes to the process.

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