



Legislative Report on Water & Acequias

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At press time, the 2017 Legislative session is in the final stretch as the legislature deliberates and votes on hundreds of bills and works on balancing the state budget. Among the many bills, there were several substantive pieces of legislation dealing with water, agriculture, rural development, and, of course, acequias. NMAA focused on priority bills addressing specific needs of the statewide acequia community but also monitored numerous bills that were relevant to acequias. NMAA was also attentive to the budget process since funding for acequia capital outlay and infrastructure programs was at stake.

Although NMAA was tracking a relatively small number of bills, they all had important implications for water policy and an analysis of the reaction from various stakeholders and policymakers points to certain

trends in water policy. Several water-related bills originated from grassroots advocacy in response to a significant issue at the local level. Some of the water bills that fell in this category were as follows: improving notice of water transfers (SB 86), clarifying that the OSE cannot authorize immediate use of water in a water lease application that is pending (SB 435), adding criteria for OSE consideration in inter-basin transfers of water (HB 418), and seeking to democratize a board that governs water in the Middle Rio Grande (HB 468).

The common thread with these bills was an intent to make water governance more democratic, transparent, and considerate of impacts to water right owners affected by water transfers or other decisions regarding water supply and management. These bills tend to have broad support from local community leaders, agricultural water users, and, in general, advocates of sustainable water policy. However, the other common thread was a predictable set of opponents. In our experience, bills that improve transparency and protection of existing rights tend to garner opposition from industry groups, developers, water brokers, and the attorneys who work for them.

The geopolitics of water in New Mexico have been shaped by conflicts over scarce water supplies. While often these conflicts play out in the courts, the legislative process also provides an open forum to debate the merits of legislation considering who is affected by decisions about water policy. NMAA's approach over the past two decades of policy advocacy has been to make incremental changes to protect the interests of rural, agricultural communities. Occasionally, a bill will pass where multiple groups collaborate for a common purpose. But, perhaps more often, bills that do not pass the legislature result in a stalemate between the supporters and the opponents of a policy change. In any case, it is always a learning experience.

The following is a summary of legislation affecting water. A more comprehensive list of water legislation, including memorials, is posted at www.lasacequias.org.

NMAA Priority Bills

SB 86 (Cisneros/T. Salazar) Online Notice of Water Transfers: This legislation promotes **transparency** relating to water right applications before the State Engineer. The bill amends existing statute, which currently requires newspaper publication, by requiring that the same notices be posted online on the State Engineer's website. The bill would improve access to information about water right applications to the public. This bill passed the House and Senate and at press time was waiting on approval from the Governor.

SB 222 (Stefanics) Exemption from "Local Public Body": This bill will amend the definition of "local public body" for purposes of budget reporting to DFA changing the threshold from \$10,000 to \$50,000 such that any entity under \$50,000 would be exempt from reporting. This change in the law would simplify reporting requirements such that entities under \$50,000 in revenue would not be required to submit budget reports to DFA Local Government Division. This bill passed the House and Senate and at press time was waiting on approval from the Governor.

Significant Bills Affecting Water Policy

SB 435 (Wirth) No Use of Water Rights before Approvals: This bill clarifies that the State Engineer cannot authorize use of water before the application has been approved. The same bill was introduced and passed by the Senate in 2015 and addressed a serious problem with the way the State Engineer administers water leases. In summary, the OSE allows "immediate use" of water through a permit for a water lease even if the application for the permit was the subject of a protest and therefore has not been

approved by the OSE. NMAA disagrees with this practice and maintains that such “immediate use” leases are unlawful. There are no acequia water rights involved in such leases presently. The bill was introduced late in the session and was not scheduled for committee hearings.

HB 418 (G. Armstrong) Inter-Basin Water Transfer Requirements: This bill would add to existing criteria that the State Engineer shall consider in an application for an appropriation of groundwater to transport out of an area-of-origin to another region. The additional criteria would be that the State Engineer consider whether the groundwater pumping would result in mining of the aquifer in the area-of-origin, if the county commission passed a resolution concerning the transfer, whether the transfer is part of the regional water plans in the area, and other factors. The bill passed the House Agriculture and Water Resources Committee with No Recommendation. At press time, it was waiting for a hearing in House Energy and Natural Resources Committee.

SB 157 (Wirth) Interstate Stream Commission Membership: This bill repeals the current statute defining membership and replaces it with new language. The Commission would remain at nine members (including State Engineer) but defines representation in a more detailed manner. Four representatives would be appointed by the Governor (one of whom should represent a tribe or Pueblo): two members of an irrigation or conservancy district, one member of an acequia or community ditch, and one representative of a small water utility. Four representatives would be appointed by the legislature (one of whom should represent a tribe or Pueblo): one member of an irrigation or conservancy district, one faculty from WRRI, one faculty from NM Tech, and one representative from a conservation organization. The bill passed the Senate and is in House Committees.

HB 468 (Romero) Elected Albuquerque Bernalillo County Water Utility Authority: This legislation would change the statute that defines the governing board of the ABCWUA from a board appointed by the City of Albuquerque and Bernalillo County to a board that is elected directly by the electorate of Bernalillo County, one member from each of five commission districts. The bill would provide for more direct and accountable representation of the citizens of Bernalillo County.

SB 350 (Wirth) Agricultural Land Valuation: This legislation would allow the creation of another type of land for purposes of valuation for lands that were formerly in agricultural production but that are not in use for residential purposes. By having a valuation lower than that for residential, property owners would be protected from steep increases in property taxes when land is no longer actively used for agriculture and eligible for the special method of valuation for agriculture. The bill passed its first Senate committee and tabled in its second committee.

SB 307 (Martinez) Oil and Gas Act Powers and Penalties: This legislation updates the Oil and Gas Act with higher fines for violations and administrative authority to assess civil penalties. It clarifies that each day is a separate penalty such that each penalty is \$1000. It increases the maximum penalty for contaminating groundwater to \$10,000. It makes it a felony to falsify records among other reforms to the Act. The bill generally would place more strict requirements on the oil and gas industry. The bill passed Senate Conservation and has not been scheduled in Senate Judiciary.

Bills Relating to Food and Agriculture

HB 207 (Salazar) Funding for Organic Program: Appropriates \$125,000 for program to fund staff for organic certification.

SB 379 (Woods)/HB 208 (Hall-Egolf) NM Grown Fresh Produce in School Meals: Appropriates \$1.2 million to the Public Education Department for schools to purchase local food.

HB 289 (Sweetser) Agriculture in Economic Development Act: Amends the Local Economic Development Act (LEDA) and adds agriculture to the types of business that can be funded with local LEDA funds. Passed House and scheduled in Senate Conservation.

HB 305 (Sweetser) Food Safety Compliance: Would allow NM Department of Agriculture to promulgate rules and regulations to implementation of the Food Safety Modernization Act (FSMA). House Business and Industry, Monday, February 27, 1:30pm. Passed House and scheduled in Senate Conservation.