



Julia Maccini, *Chair*
Roberto Roibal, *Vice-Chair*
Camilla Feibelman
Steve Glass
Kerry Howe

Darrell Kundargi
Alejandría Lyons
John Pietz
Caroline Scruggs

February 21, 2020

Location: Bernalillo County Public Works Division, 2400 Broadway SE

Time: 8:30 a.m. to 10:30 a.m.

Board Members Present: Chair Julia Maccini, Vice-Chair Roberto Roibal, Camilla Feibelman, Steve Glass, Kerry Howe, Darrell Kundargi, and Alejandría Lyons

Board Members Absent (excused): John Pietz and Caroline Scruggs

PIC Members Present: Kali Bronson, Jake Daugherty, Mo Hobbs, Mark Kelly, Dan McGregor, Kate Mendoza, Kathy Verhage, and Ken Ziegler

Guests: Maggie Hart Stebbins (ONRT), Ralph Gruebel (ONRT), Mike Neas (public)

I. Call to Order

Chair Ms. Julia Maccini called the meeting to order at 8:32 a.m.

II. Approval of Agenda

Chair Maccini requested a motion to approve the agenda. Vice-Chair Roberto Roibal motioned to approve the agenda and Mr. Steve Glass seconded. Motion to approve the agenda carried unanimously.

III. Approval of Meeting Minutes

a. January 10th Meeting Minutes

Chair Maccini asked if there were any edits to the January meeting minutes. Mr. Glass stated he had provided edits electronically. Chair Maccini requested a motion to approve the meeting minutes as edited by Mr. Glass. Mr. Glass motioned to approve the meeting minutes and Vice-Chair Roibal seconded. Motion to approve the meeting minutes carried unanimously.

b. January 13th Special Meeting Minutes

Chair Maccini asked board members if there were any edits to the January special meeting minutes. With no changes requested to the minutes, Chair Maccini requested a motion to approve the special meeting minutes. Mr. Glass motioned to approve the special meeting minutes and Mr. Darrell Kundargi seconded. Motion to approve the special meeting minutes carried unanimously.

IV. Board Business

a. PIC Agency Updates

Policy Implementation Committee (PIC) member Mr. Dan McGregor, with Bernalillo County (County), informed board members that the County is campaigning to bring aging septic systems into compliance. Mr. McGregor said the County is working to inform owners with septic systems more than 30 years old that a system evaluation is required to detect and prevent system failures, with subsequent evaluations required every five years. Mr. McGregor said the County has received approximately 200 phone calls from system owners requesting information on how to get their systems into compliance. Mr. McGregor said there have been some challenges with the County's septic system database (e.g., its inclusion of decommissioned systems), but the County is working with the Albuquerque Bernalillo County Water Utility Authority (Water Authority) to resolve database discrepancies.

PIC member Ms. Kali Bronson, with the County, informed board members that the Arid Low Impact Design (LID) Coalition met on January 16, 2020 and discussed applying asset management principles to green stormwater infrastructure. Ms. Bronson said the Arid LID Coalition is partnering with the Southwest Environmental Finance Center at the University of New Mexico (UNM) as part of a grant to implement beta tests in several cities looking at applying asset management principles to green stormwater infrastructure over the next several years.

PIC member Mr. Ken Ziegler with the City of Albuquerque (City) told board members that Mr. Ryan Mast was recently named the Director of the City Environmental Health Department. Mr. Ziegler said the City held an open house on Wednesday February 19, 2020 to discuss progress and next steps for environmental cleanup and redevelopment at the Albuquerque Rail Yards.

b. 2020 State Legislative Update

PIC member Ms. Kate Mendoza, with the Water Authority, briefed board members regarding legislation related to water quality and environmental protection from the 2020 New Mexico State Legislative Session. Chair Maccini asked if there were any responses to the Board's January letters to the New Mexico House of Representatives Appropriations and Finance Committee and New Mexico Senate Finance Committee supporting funding for the New Mexico Environment Department (NMED), the Office of Natural Resources Trustee (ONRT), Energy, Minerals, and Natural Resource's

Department (ENMRD), Interstate Stream Commission (ISC), and the Office of the State Engineer (OSE) (collectively “State Entities”). Ms. Mendoza said she received a thank-you from Rep. Melanie Stansbury for the board’s support and board member Ms. Camilla Feibelman said she received a thank-you from Rep. Nathan Small. Ms. Mendoza said funding for the State Entities in the 2020 General Appropriations Act as approved by the New Mexico Senate generally followed the Legislative Finance Committee recommendations.

V. Presentation: New Mexico Office of Natural Resources Trustee, Ms. Maggie Hart Stebbins and Mr. Ralph Gruebel

Ms. Maggie Hart Stebbins, New Mexico Office of Natural Resources Trustee (ONRT), provided board members with an overview of her agency. Ms. Hart Stebbins said the ONRT is a small, independent state agency that seeks monetary compensation for damages occurring to natural resources (e.g. wildlife, wildlife habitat, surface water, etc.) as a result of hazardous substance releases, with the objective of restoring natural resources, and the benefits they provide, to pre-release conditions. Ms. Hart Stebbins said when restoration is not possible, ONRT requires an equivalent replacement of those resources. Ms. Hart Stebbins explained that ONRT differs from NMED and federal oversight entities in that ONRT evaluates the damage caused to natural resources and seeks compensation and restoration to pre-contamination conditions, while NMED and federal overseers take enforcement action, require responsible parties (RPs) to characterize the extent of contamination, and remediate the release to regulatory health-based standards.

Ms. Hart Stebbins said ONRT and NMED have a cooperative relationship, and that ONRT has a number of partners or co-trustees that include federal, state, tribal, and local entities. Ms. Hart Stebbins said ONRT addresses damage to resources throughout the state; however, contaminant releases may occur across state boundaries and entities outside of New Mexico can become co-trustees. For example, the State of Utah is a co-trustee for the 2015 Gold King Mine spill that occurred within the Bonita Peak Mining District. Ms. Hart Stebbins said the authority for ONRT to act on behalf of New Mexico comes from the New Mexico Natural Resources Trustee Act [NMAC 1978, 75-7-1]. Federal laws that dictate ONRT authority are the Comprehensive Environment Response, Compensation, and Liability Act (CERCLA), Oil Pollution Act, and Clean Water Act (CWA). ONRT also works in coordination with the New Mexico Attorney General’s Office.

Mr. Ralph Gruebel, ONRT Executive Director, explained to board members that ONRT utilizes multiple resources to learn about sites with a hazardous substance release. Mr. Gruebel said ONRT stays in communication with the NMED for information on release sites, subscribes to the Environmental Protection Agency (EPA) release list, and also monitors press releases and newspaper articles. Ms. Hart Stebbins said private citizens can also refer potential sites. Mr. Gruebel said when a remediation design is settled on between an RP and the NMED, ONRT has a three-year statute of limitations to begin their process to recover natural resource damages. Mr. Gruebel explained that there are several hazardous substances that do not fall within the purview of the ONRT, including petroleum products, unless the release occurred into or upon navigable waters. Mr. Gruebel pointed out that ONRT could not seek compensation for damages to natural resources that occurred as a result of the Kirtland Air Force Base Bulk Fuels Facility Spill because it was a

petroleum release. Mr. Gruebel said if petroleum was mixed on site with other hazardous substances and released into the environment, the ONRT could seek compensation for damages. Mr. Gruebel noted that there are also a number of household products that do not fall under federal definitions of hazardous substances.

Ms. Hart Stebbins explained that ONRT takes six steps to restore or replace natural resources: 1) Pre-assessment of the resource; 2) A damage assessment plan; 3) Completion of a damage assessment; 4) Litigation and/or settlement; 5) A restoration plan; and 6) Restoration of natural resources. Ms. Hart Stebbins said while in the pre-assessment phase, ONRT must conclude that damages occurred to natural resources, then determine if it is worth pursuing restoration. Mr. Gruebel noted that quantifying damages at sites with small releases can be much more challenging compared to a site with a large release. Ms. Hart Stebbins said ONRT tries to initiate a collaborative process with RPs during this phase. Ms. Hart Stebbins said the damage assessment plan and the damage assessment phases involve the use of contractors and include opportunities for public input in the damage assessment plan. Mr. Glass asked how ONRT and its contractors assess values for natural resources. Mr. Gruebel explained that valuations have been informed by CWA and CERCLA settlements for groundwater and surface water and take into account location, type of natural resource, criticality of the resource (e.g., sole drinking water aquifer) and inflation. Mr. Gruebel said scarcity of a resource and societal views on resources also impact natural resource assessments and make public input important for final outcomes. Board member Dr. Kerry Howe asked if ONRT includes an assessment of trade-offs in regard to full restoration of a natural resource compared to the energy consumption required to reach that goal. For example, if restoring a natural resource with low levels of contamination caused high carbon dioxide emissions, would the ONRT factor the emissions into their damage assessment? Ms. Hart Stebbins said evaluation of environmental trade-offs is incorporated into ONRT damage assessments. Additionally, Mr. Gruebel said ONRT considers technical infeasibility where treating low levels of contamination becomes difficult and more expensive, and restoration begins to cost more than it would to replace a natural resource.

Ms. Hart Stebbins said RPs can either agree to settle on natural resource damage compensation (which most RPs choose), or natural resource damages can be assigned through litigation. Ms. Hart Stebbins said if the ONRT reaches out to RPs while they are working with the NMED on remediation plans, the RP may decide to remediate contaminant concentrations to a level below that required by the NMED to reduce the cost of damages owed to New Mexico. Ms. Hart Stebbins explained that restoration funds go into an ONRT trust fund and are strictly to be used for on-site restoration or replacement under federal law. For example, if there was a hazardous substance release into groundwater, settlement funds must go toward restoring or replacing that groundwater. Ms. Hart Stebbins said services to restore natural resources are provided by contractors via a request-for-proposal (RFP) process and all restoration plans include opportunities for public input.

Ms. Hart Stebbins highlighted that since the early 2000s, ONRT has facilitated restoration of more than 29 sites, completed two land transfers and three conservation easements, and gathered more than \$30 million in natural resource damage compensation for New Mexico. Ms. Hart Stebbins said four settlements within Bernalillo County totaled almost \$7

million. Ms. Hart Stebbins said the ONRT currently has eight active restoration projects in various phases. Ms. Hart Stebbins said the funding granted in the 2020 New Mexico Legislative Session will enable ONRT to accelerate progress for active projects and implement assessments for additional sites. Ms. Hart Stebbins said she plans to advocate for greater funding during the next legislative session. Ms. Hart Stebbins said over the past two decades, every dollar reimbursed for restoration has resulted in a \$7 return for New Mexico, which ONRT hopes will continue to grow as increased funding allows for greater restoration capabilities. Ms. Hart Stebbins concluded her presentation by opening the floor up for questions and discussion.

Board members discussed the feasibility of incorporating damages to natural resources caused by methane. Mr. Gruebel said assessing damages from methane, given the high volume of methane release sites, is virtually impossible because of the difficulty in establishing a direct link between a particular methane release and subsequent environmental damage. Additionally, Ms. Hart Stebbins and Mr. Gruebel said the ONRT can only assess damages related to natural resources and does not have the authority to assess based on impacts to human health.

Chair Maccini asked for clarification on how a land transfer occurs. Mr. Gruebel said if a hazardous substance release damaged surface habitat, an RP could acquire land and turn it over to New Mexico as a replacement for damaged land. For example, if 200 acres were damaged beyond restoration the RP would need to provide a land transfer of 200 acres to New Mexico, if approved by ONRT. Mr. Ziegler asked if ONRT could assess damages of natural resources outside the statute of limitations for a particular site if an additional or emerging contaminant was found. Ms. Hart Stebbins replied that discovery of an additional or emerging contaminant could be a potential case for ONRT to seek compensation for damages caused outside the statute of limitations.

VI. Other Board Business

Ms. Alejandría Lyons informed board members that the 3rd Annual Bosque Planting Day was taking place February 22, 2020 from 10 a.m. to 3 p.m.

VII. Public Comment Period

Mr. Mike Neas informed board members that he is participating in an effort to have Governor Michelle Lujan Grisham sign an executive order to create a special rule for the Oil Conservation Commission to protect water in the Albuquerque Basin as a whole. Mr. Neas referred to Executive Order 2008-04, signed by former Governor Bill Richardson, where a six-month moratorium was imposed on new oil and gas drilling in Santa Fe County and the Galisteo Basin.

VIII. Adjourn

Chair Maccini requested a motion to adjourn the meeting. Mr. Glass motioned to adjourn the meeting and Vice-Chair Roibal seconded the motion. The meeting was adjourned at 9:54 a.m.