

San Juan
Farmington WR
file # 10

OSE-2260

SAN JUAN
State - Farmington - Navajo Agreement

Re: City of Farmington water Rights
2004-2005

20

SJ-20
Farmington
copy: SJ-17
Navajo Settlement

Agreement Among the
State of New Mexico, the City of Farmington and the Navajo Nation

The State of New Mexico, the City of Farmington and the Navajo Nation, hereinafter referred to as "the Parties," enter into this Agreement under the following terms and conditions:

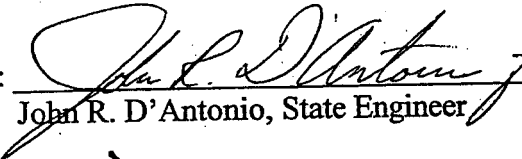
1. This Agreement is made for the purpose of advancing the settlement of legal disputes, including pending litigation by and among the Parties in the general stream adjudication of the San Juan River Basin in New Mexico being determined in *New Mexico v. United States*, No. 75-184, District Court of San Juan County, or in another court of competent jurisdiction (San Juan River Adjudication).
2. The provisions of this Agreement, including the attached Terms of Consent Order, and any other written or oral communications related thereto, are covered by Rule 11-408 of the New Mexico Rules of Evidence. The Terms of Consent Order attached hereto and any supporting documentation shall not constitute evidence of water rights claimed by the City of Farmington, and no compromises made in the course of negotiating this Agreement may be used as either evidence or argument by any Party to this Agreement in the San Juan River Adjudication.
3. This Agreement is effective upon execution by the Parties, and may be amended or terminated only by written agreement of all of the Parties.
4. The State of New Mexico and the City of Farmington agree to execute a consent order substantially containing the water right elements described by the Terms of Consent Order attached hereto to determine certain rights of the City of Farmington to divert and use waters of the Animas River, and to submit the consent order to the Court for entry in the San Juan River Adjudication, once all of the following conditions are met:
 - (a) the State of New Mexico and the Navajo Nation execute the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (Settlement Agreement);
 - (b) the Congress approves the Settlement Agreement, and the Secretary of the Interior executes the Settlement Agreement on behalf of the United States; and
 - (c) the Court in the San Juan River Adjudication enters a Partial Final Decree adjudicating the rights of the Navajo Nation to use and administer waters of the San Juan River Basin as described in paragraph 3.0 of the Settlement Agreement.

The City of Farmington acknowledges that the content and form of the consent order will include, in addition to the terms attached hereto, standard provisions required by either the Court or the State Engineer.

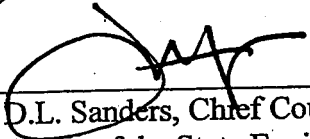
5. Even if the conditions described in paragraph 4 are not met in accordance with the associated milestone dates for said conditions described in the Settlement Agreement, the State of New Mexico agrees to execute a consent order containing the water right elements described by the Terms of Consent Order attached hereto, and to submit the consent order to the Court for entry in the San Juan River Adjudication, so long as the City of Farmington has fulfilled the commitment described in paragraph 8 of this Agreement for the City to support the Settlement Agreement, including enabling legislation, and has not caused conditions (b) or (c) of paragraph 4 to not be met.
6. The Navajo Nation agrees to not challenge the consent order submitted to the Court for entry in the San Juan River Adjudication pursuant to paragraph 4 so long as:
 - (a) the Settlement Agreement has not been terminated pursuant to subparagraph 11.2 of the Settlement Agreement;
 - (b) the consent order submitted to the Court for entry in the San Juan River Adjudication in accordance with paragraph 4 is substantially of the content of the Terms of Consent Order attached hereto; and
 - (c) the City of Farmington has fulfilled the commitment described in paragraph 8 of this Agreement.
7. Paragraph 6 constitutes the entire agreement of the Navajo Nation as to the quantification of the City of Farmington's rights to be determined and settled by the consent order described in paragraph 4. The Navajo Nation may challenge the consent order if the consent order is submitted to the Court in the San Juan River Adjudication pursuant to paragraph 5 or if any of the conditions specified in paragraph 6 are not met. In the event that the Navajo Nation challenges the consent order and the Settlement Agreement has not been terminated pursuant to subparagraph 11.2 of the Settlement Agreement, the Navajo Nation shall be bound by the provisions of subparagraph 9.6 of the Settlement Agreement with respect to the challenge of the City's rights that are the subject of the Terms of Consent Order.
8. The City of Farmington agrees to actively support the Settlement Agreement, including passage of the Congressional legislation described in paragraph 5.0 of the Settlement Agreement and the Court's entry in the San Juan River Adjudication of the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement.
9. This Agreement constitutes the entire understanding among the Parties.

In witness whereof, the Parties hereto have duly executed this Agreement.

STATE OF NEW MEXICO

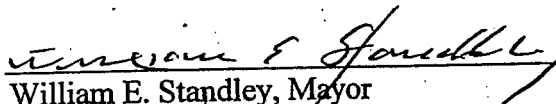
By: 
John R. D'Antonio, State Engineer

Date: 11 Mar '05

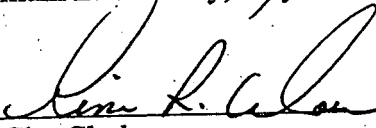
By: 
D.L. Sanders, Chief Counsel
Office of the State Engineer

Date: 11 March 05

CITY OF FARMINGTON

By: 
William E. Standley, Mayor

Date: 2-11-05


Attest: 
City Clerk

Date: 2-11-05

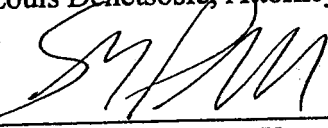
By: 
Jay Burnham, City Attorney

Date: 2/10/05

NAVAJO NATION

By: 
Louis Denetsosie, Attorney General

Date: 2/22/05

By: 
Stanley M. Pollack, Water Rights Counsel
Navajo Nation Department of Justice

Date: 2/23/05

TERMS OF CONSENT ORDER

The State of New Mexico and the City of Farmington agree to the following terms of a consent order to describe elements of certain of the City's rights to divert and use the waters of the San Juan River Stream System:

1. Origination. The water rights described by paragraphs 3 and 4 derive from rights previously adjudicated in the case of *Echo Ditch Company, et al. v. The McDermott Ditch Company, et al.*, San Juan County District Court, Cause No. 01690 (April 8, 1949), which decree is known as the "Echo Ditch Decree," and include rights adjudicated to the Town of Farmington by the Echo Ditch Decree and rights adjudicated to other entities or persons that have been transferred to municipal use by the City pursuant to permits approved by the State Engineer under New Mexico State Engineer File Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A. The water rights described by paragraph 5 are in accordance with the License approved by the State Engineer pursuant to New Mexico State Engineer File No. 2995.

2. General Elements. The following elements apply to the water rights described in paragraphs 3 through 5:

(a) The rights described in paragraphs 3 through 5 are for the diversion of water from the Animas River, a tributary of the San Juan River; except, that the rights described in paragraph 5 also may be supplied by diversion or storage of water originating in the drainage above the City of Farmington's municipal storage reservoir described in paragraph 5.

(b) The rights described in paragraphs 3 through 5 are for the diversion and use of water for municipal water supply purposes, including municipal, domestic, industrial, commercial, and residential uses.

(c) The alternate points of diversion from the Animas River for the rights described in paragraphs 3 through 5 are as follows:

(1) heading of the Farmers Ditch located on the Animas River at a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, T.31N., R.11W., N.M.P.M., whence the West $\frac{1}{4}$ corner of said Section 26 bears S 82° 02' W, 998.5 feet distant;

(2) pumping station on the Animas River (commonly referred to as Animas Pump Station #2) located at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T.30N., R.12W., N.M.P.M., whence the NW corner of said Section 28 bears N 43° 41' 35" W, 3995.04 feet distant; and

(3) pumping station on the Willett Ditch (commonly referred to as Animas Pump Station #1) located at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, T.29N., R.13W., N.M.P.M., whence the NE corner of said Section 14 bears N 89° 00' E, 2380 feet distant.

(d) The rights described in paragraphs 3 through 5 are to supply uses within the geographic areas in New Mexico that can be served by the City of Farmington's existing municipal water system facilities and any future extensions of the water system facilities, including areas outside the corporate limits of the City that are connected to the water system and served through contracts for delivery of City water such as contracts entered historically by the City for delivery of water to the Lower Valley Water Users Association, the Upper La Plata Water Users Association and the Shiprock Navajo Tribal Utility Authority for uses within their water service areas.

(e) The City of Farmington shall not be entitled hereafter to increase diversions in association with the rights to consume the amounts of water described in

paragraphs 3 through 5 over and above the amounts of diversion specified by the respective paragraphs regardless of actual return flows of portions of said amounts of diversion to the San Juan River Stream System; except, that diversions pursuant to paragraph 3 may be greater than the consumptive use described in that paragraph depending upon measured return flows to the extent provided by paragraph 3.

(f) The City of Farmington shall measure diversions and deliveries of water made pursuant to paragraphs 3 through 5 at the points of diversion and delivery described therein, and shall measure return flows to the river from diversions made pursuant to paragraph 3, as necessary to demonstrate that the diversions and deliveries of water are in accordance with the provisions of the respective paragraphs and that the consumptive uses described by the respective paragraphs are not exceeded.

(g) The City of Farmington shall measure and record storage in the Farmington municipal reservoir described in paragraph 5 as well as diversions from reservoir storage.

(h) Records of diversions, deliveries, storage and return flows for each calendar month obtained from measurements made pursuant to subparagraphs (f) and (g) of this paragraph shall be submitted to the New Mexico State Engineer no later than the tenth day of the following month.

3. Trust Rights and Permits 01417. Pursuant to the rights previously adjudicated to the Town of Farmington in trust for irrigation use by owners of lots and parcels of land situated within the corporate limits of the Town as generally described by the Echo Ditch Decree at Part 1, Section III, page 64, and pursuant to the permits approved by the State Engineer under New Mexico State Engineer File Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A, the

City of Farmington has rights to divert 4,813 acre-feet, or the quantity of water necessary to supply a consumptive use of 2,580 acre-feet, whichever is less, of surface water in any one year from the Animas River, with a maximum diversion rate of 10.0 cubic-feet-per-second (cfs), at the alternate points of delivery described in subparagraph 2(c). The priorities of the diversion rights under this paragraph are as follows:

(a) a diversion of 1,603.6 acre-feet, or the quantity of water necessary to supply a consumptive use of 859.6 acre-feet, whichever is less, in any year, at a maximum diversion rate of 3.33 cfs, with a priority date of 1877, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 132 and 142, and from Permits Nos. 01417-1 and 01417-1A;

(b) a diversion of 695.7 acre-feet, or the quantity of water necessary to supply a consumptive use of 372.9 acre-feet, whichever is less, in any year, at a maximum diversion rate of 1.45 cfs, with a priority date of 1878, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 165 and 171, and from Permits Nos. 01417-3 and 01417-3A;

(c) a diversion of 1,226.6 acre-feet, or the quantity of water necessary to supply a consumptive use of 657.5 acre-feet, whichever is less, in any year, at a maximum diversion rate of 2.55 cfs, with a priority date of 1891, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 213 and 226, and from Permits Nos. 01417-2 and 01417-2A;

(d) a diversion of 24.5 acre-feet, or the quantity of water necessary to supply a consumptive use of 13.1 acre-feet, whichever is less, in any year, at a maximum diversion

rate of 0.05 cfs, with a priority date of 1896, deriving from Permits Nos. 01417-5 and 01417-5A; and

(e) a diversion of 1,262.6 acre-feet, or the quantity of water necessary to supply a consumptive use of 676.9 acre-feet, whichever is less, in any year, at a maximum diversion rate of 2.62 cfs, with a priority date of 1897, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 258 and 267, and from Permits Nos. 01417-4 and 01417-4A.

The diversions by the City of Farmington pursuant to this paragraph shall be limited to the amounts of consumptive use described in this paragraph; except, that the City in any year may increase diversions over and above the described amounts of consumptive use up to the maximum amounts of diversions described in this paragraph provided that the City measures the actual amounts of return flows resulting from the diversions made pursuant this paragraph demonstrating that up to 2,233 acre-feet of the diversions are being returned in that year to the San Juan River at the current location of the Farmington Wastewater Treatment Plant outfall, but may only so increase the diversions by the measured amount being returned.

4. Decreed Municipal Use Rights. Pursuant to the rights previously adjudicated to the Town of Farmington for municipal water supply purposes as generally described by the Echo Ditch Decree at Part 1, Section III, page 64, the City of Farmington has the right to divert 7,240 acre-feet, or the quantity of water necessary to supply a delivery of 3,620 acre-feet to the Farmington municipal reservoir described in paragraph 5 or to the Farmington municipal water supply system directly if not to storage, whichever is less, of surface water from the Animas River in any year, at a maximum diversion rate of 10.0 cfs; or the rate of flow necessary to deliver 5.0 cfs to the Farmington municipal reservoir or to the Farmington municipal water

supply system directly if not to storage, whichever is less, and with a priority date of 1877. The City may divert water under the rights described in this paragraph at the alternate points of delivery described in subparagraph 2(c). The rights under this paragraph derive from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 213 and 226. The City may consumptively use or deplete the full amount of water delivered to the Farmington municipal reservoir pursuant to this paragraph, including by reservoir evaporation, and is not required to return any portion of the delivery to the reservoir to the San Juan River Stream System.

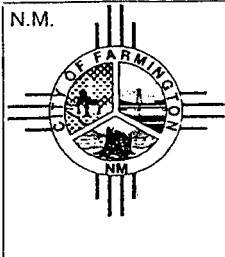
5. License 2995. Pursuant to License No. 2995, the City of Farmington has the right with a priority date of August 20, 1959, to divert at a maximum rate of 50.0 cfs from the Animas River at the alternate points of delivery described in subparagraphs 2(c)(1) and 2(c)(2), or from the drainage above the Farmington municipal reservoir described in this paragraph, or from both sources in combination, as necessary to fill and refill as often as water is available 6,855 acre-feet of storage capacity in the Farmington municipal reservoir and to supply a diversion from reservoir storage of 7,200 acre-feet in any year. The City may consumptively use or deplete the full amount of water diverted from the Farmington municipal reservoir pursuant to this paragraph, and is not required to return any portion of the diversion from the reservoir to the San Juan River Stream System. The Farmington municipal reservoir is commonly known as "Farmington Lake" and is formed by the storage dam located at a point in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, T.30N., R.12W., N.M.P.M., whence the SW corner of said Section 21 bears S 61° 44' W, 3014.1 feet distant.

6. Settlement in Full. The rights described in paragraphs 2 and 3 comprise in full the rights of the City of Farmington deriving from the rights previously adjudicated to the Town of

Farmington in trust for irrigation use by owners of lots and parcels of land situated within the corporate limits of the Town generally described by the Echo Ditch Decree at Part 1, Section III, page 64, and the rights of the City pursuant to Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A. The rights described in paragraphs 2 and 4 comprise in full the rights of the City deriving from the rights previously adjudicated to the Town of Farmington for municipal water supply purposes generally described by the Echo Ditch Decree at Part 1, Section III, page 64. The rights described in paragraphs 2 and 5 comprise in full the rights of the City deriving from the appropriation of water pursuant to License No. 2995.

#242

UTAH COLO.
ARIZ. N.M.



CITY OF FARMINGTON

800 Municipal Drive
Farmington, NM 87401-2663
(505) 599-1120
Fax: (505) 599-1119
<http://www.farmington.nm.us>

*SJ
Farmington*

February 10, 2005

State Engineer John R. D'Antonio, Jr., P.E.
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102

Re: Proposed Navajo Water Rights Settlement

John
Dear Mr. D'Antonio:

For your information and use, I am enclosing a certified copy of City of Farmington Resolution No. 2005-1132 entitled "A Resolution Endorsing and Supporting the Proposed Navajo Water Rights Settlement."

If I can answer any questions or supply any further information in regard to the Resolution, please let me know.

Sincerely,

Jay B. Burnham
City Attorney

Enclosure

cc: John Whipple, ISC

RESOLUTION NO. 2005-1132

A RESOLUTION ENDORSING AND SUPPORTING THE PROPOSED NAVAJO
WATER RIGHTS SETTLEMENT

WHEREAS, representatives of the Navajo Nation and State of New Mexico have conducted extensive negotiations that have resulted in a proposed settlement of the Navajo Nation's claims to water rights in the San Juan River Basin in New Mexico; and

WHEREAS, the State and Navajo Nation have accepted comments from various interested parties, including the City of Farmington, regarding the proposed settlement documents and made revisions to the draft documents in an effort to address as many of the concerns of those interested parties as possible; and

WHEREAS, many of the revisions to the proposed settlement documents have resulted in additional protections to non-Indian water users within the basin, including the City of Farmington; and

WHEREAS, the proposed settlement has been approved by the Navajo Nation Council on December 29, 2004 and the New Mexico Interstate Stream Commission on January 12, 2005, and will soon be considered for approval by the Attorney General and Governor of the State of New Mexico; and

WHEREAS, if approved by the Attorney General and the Governor, the proposed settlement will need to be approved, authorized and funded by the United States Senate and House of Representatives; and

WHEREAS, City of Farmington representatives have entered into discussions with representatives of the State and the Navajo Nation regarding the City's water rights and how the City would be affected by the proposed Navajo water rights settlement; and

WHEREAS, as a result of the those discussions, the City, the State and the Navajo Nation have reached an agreement concerning several of the City's major water rights and how they would be presented to the water rights adjudication court and administered by the State; and

WHEREAS, members of the City staff have conducted an analysis of the City's water rights and determined that with the agreement in place regarding the City's major water rights, the City has sufficient rights to satisfy its needs for the future pursuant to the City's Forty Year Water Plan; and

WHEREAS, the proposed settlement, if approved and implemented, will result in the removal of the uncertainties associated with having the large claims of the Navajo Nation unresolved and will allow all parties, including the City, to move forward with water rights and water use planning with confidence and certainty; and

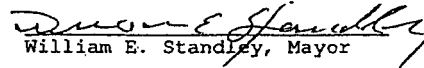
WHEREAS, after considering the benefits to the City of Farmington of having these assurances in place, the City Council has determined that it is in the best interest of the City of Farmington and its citizens and water utility customers to support the proposed Navajo Water Rights Settlement; and

WHEREAS, the agreement between the City, the State and the Navajo Nation concerning the City's major water rights is contingent on the City Council adopting a resolution indicating the City's support for the Navajo Water Rights Settlement.

NOW, THEREFORE, BE IT RESOLVED by the City of Farmington that the City endorses and supports the proposed settlement between the State of New Mexico and the Navajo Nation concerning the Navajo Nation's claims to water rights in the San Juan River Basin in New Mexico as set forth in documents issued by the Office of the State Engineer and the Interstate Stream Commission on December 10, 2004; and

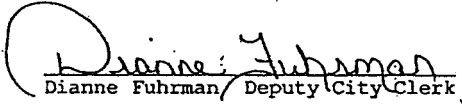
BE IT FURTHER RESOLVED that City staff is directed to distribute copies of this resolution to the appropriate officials with the State and the Navajo Nation, and to all members of New Mexico's Congressional delegation.

PASSED, APPROVED, SIGNED AND ADOPTED this 8th day of February, 2005.


William E. Standley, Mayor

SEAL

ATTEST:


Dianne Fuhrman, Deputy City Clerk

SJ - Farmington Copy: SJ-17 Navajo Sett

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FARMINGTON NEW MEXICO

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LOCAL NEWS

Council endorses Navajo Water Rights Settlement

By Valerie Gritton/The Daily Times
Feb 10, 2005, 11:20 pm

FARMINGTON — One of the most controversial water rights agreements in San Juan County history — the Navajo Nation Water Rights Settlement — now has the official vote of endorsement by the Farmington City Council.

The vote Tuesday was 3-1.

The city's water attorney, Richard Cole, told the council if it wanted to ensure the city's future water rights, councilors needed to sign off on the settlement.

"I don't think the city has a choice," Cole said.

The council also voted 3-1 to approve an agreement between the city, state and Navajo Nation that outlines a major portion of the city's municipal use water rights.

The negotiated agreement between the city and Navajo Nation is contingent upon the approval and execution of the Navajo Nation Water Rights Settlement, but the state is bound to the agreement regardless.

The agreement must also be approved by the District Court in the San Juan River Adjudication. In addition, the city had to agree to actively support the Navajo Nation Water Rights Settlement.

City Councilor Mary Fischer voted against the endorsement and proposed resolution, saying the vote was probably the most important one she will make as a member of the City Council.

"For years I have expressed concerns about this," she said. "I think what we are doing is a mistake and the results to our community are significant."

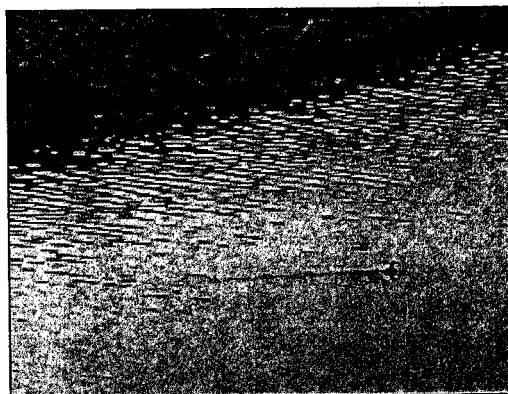
Representatives from the city, state and Navajo Nation have been working on the negotiation of the city's water rights since August.

Tuesday's meeting was the first time terms of the negotiated agreement were made public.

As outlined in the agreement, the city can divert 4,813 acre-feet of trust water rights from the Animas River for municipal use. But even with municipal water rights, the city would be allowed to consume just over half — or 2,580 acre-feet — with the remainder of water to be returned to the river.

The city also can put 3,620 acre-feet of water into Farmington Lake for municipal purposes, and divert 7,200 acre-feet of water from the Animas River to Farmington

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Dave Watson/The Daily Times
A small amphibious bird swims in Farmington Lake Wednesday afternoon. The Navajo Nation Water Rights Settlement, which was endorsed Tuesday by the City Council, permits the city to put 3,620 acre-feet of water per year into the lake as well as divert 7,200 acre-feet from the Animas River.

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Lake every year.

Councilor Tommy Roberts supported the endorsement, saying the settlement and subsequent agreement between the city, Navajo Nation and state will protect the citizens of Farmington and their water future.

Meanwhile, Cole agreed with Fischer's concerns that the state engineer was attacking the Echo Ditch Decree and the city's rights under the decree.

But Cole also said the negotiated agreement with the Navajo Nation and state has "a lot to offer."

Cole also said the state engineer's office was "pretty tough on the city" because they cut the city's trust water rights from 10,000 acre-feet to 2,580.

"I thought that was a real hair cut," he said.

John Utton, the negotiating attorney for the state, told the council that members of the state engineer's office "negotiated the largest amount the staff could stomach."

After the vote, New Mexico Interstate Stream Commission Chairman Jim Dunlap said the negotiation was a milestone for San Juan County.

"I believe in my heart this is the right thing to do," he said.

Navajo Nation Water Rights Commission member Bernadette Tsosie, who participated in the negotiations, attended Tuesday's meeting.

"It's been a whole group effort and not one party has taken the lead," Tsosie said. "Everyone along the (settlement) area will benefit."

Valerie Gritton: vgritton@daily-times.com

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SJ-
Farmington

STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER

John R. D'Antonio, Jr. P.E.
State Engineer

LITIGATION & ADJUDICATION
PROGRAM
130 South Capitol
Santa Fe, New Mexico 87501

Mailing Address:
P.O. Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6150
Fax: (505) 827-3887

February 8, 2005

Jay B. Burnham, City Attorney
City of Farmington
800 Municipal Drive
Farmington, NM 87401-2663

I am in receipt of your letter dated February 2, 2005, I write to confirm that it represents a mutual understanding of the meaning of the term "actively support" the Navajo Water Rights Settlement as set forth in your letter.

Thanks for your help and cooperation throughout this process.

Sincerely,

A handwritten signature in black ink, appearing to be "D.L. Sanders", written over a horizontal line.

D.L. Sanders, Chief Counsel

xc: Mayor and Council
Bob Hudson, City Manager
Gina Morris, City Clerk
Paul Martin, City Engineer
Paul Montoia, Water Resources
John Utton, Sheehan, Sheehan and Stelzner
~~John Whipple, Interstate Stream Commission~~

*new file - SJ -
Farmington
copy: SJ-17
Navajo. Little*

CITY OF FARMINGTON

**CITY ATTORNEY'S OFFICE *800 MUNICIPAL DRIVE
FARMINGTON, NM 87401
PHONE: 505-599-1120 * FAX: 505-599-1119**

FACSIMILE TRANSMITTAL SHEET

RECEIVING FAX NUMBER:

(505) 827-6188

DATE: FEBRUARY 3, 2005

DELIVER TO: JOHN WHIPPLE

INTERSTATE STREAM COMMISSION

FROM: JAY B. BURNHAM, CITY ATTORNEY

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET 5

COMMENTS:

SEE ATTACHED. HARD COPY WILL NOT FOLLOW.

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fax/w/da

UTAH | COLO.
ARIZ. | N.M.

CITY OF FARMINGTON

800 Municipal Drive
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Fax: (505) 599-1119
<http://www.farmington.nm.us>

February 2, 2005

D L Sanders, Chief Counsel
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102

Re: Paragraph 8-Proposed Agreement Among the State of New Mexico, the Navajo Nation and the City of Farmington Regarding the Navajo Water Rights Settlement

Dear D L:

The purpose of this letter is to memorialize the discussions your office and I have had in regard to the meaning of the "actively support" language in paragraph 8 of the above-referenced agreement.

It is my understanding that if the City Council should approve the above-referenced agreement, the City's active support of the Navajo Water Rights Settlement (Settlement) would include the following:

- 1) adoption of a resolution stating that the City officially supports the Settlement substantially in the form of the attached draft resolution;
- 2) distribution of copies of the resolution to New Mexico's Congressional delegation;
- 3) upon the presentation of the Partial Final Decree to the court for approval in the San Juan River adjudication, the filing of a pleading by the City's counsel of record indicating that the City supports the entry of the Partial Final Decree;
- 4) confirm the City's support of the Settlement in any local meetings, including those with federal or state legislators or their aides concerning the Settlement.

It is also my understanding that City officials will not be required to travel to Washington, D.C. to provide testimony at congressional hearings on authorizing legislation, and that the City is not committing itself to expend City funds to lobby or promote the Settlement except as outlined above.

If this is not your understanding of the City's obligations under paragraph 8 of the agreement, please let me know as soon as possible.

Thanks for your help and cooperation throughout this process.

Sincerely,



Jay B. Burnham
City Attorney

xc: Mayor and Council
Bob Hudson, City Manager
Gina Morris, City Clerk
Paul Martin, City Engineer
Paul Montoia, Water Resources
John Utton, Sheehan, Sheehan and Stelzner
John Whipple, Interstate Stream Commission

DRAFT**RESOLUTION NO. 2005-****A RESOLUTION ENDORSING AND SUPPORTING THE PROPOSED
NAVAJO WATER RIGHTS SETTLEMENT**

WHEREAS, representatives of the Navajo Nation and State of New Mexico have conducted extensive negotiations that have resulted in a proposed settlement of the Navajo Nation's claims to water rights in the San Juan River Basin in New Mexico, and

WHEREAS, the State and Navajo Nation have accepted comments from various interested parties, including the City of Farmington, regarding the proposed settlement documents and made revisions to the draft documents in an effort to address as many of the concerns of those interested parties as possible, and

WHEREAS, many of the revisions to the proposed settlement documents have resulted in additional protections to non-Indian water users within the basin, including the City of Farmington, and

WHEREAS, the proposed settlement has been approved by the Navajo Nation Council on December 28, 2004 and the New Mexico Interstate Stream Commission on January 12, 2005, and will soon be considered for approval by the Attorney General and Governor of the State of New Mexico, and

WHEREAS, if approved by the Attorney General and the Governor, the proposed settlement will need to be approved, authorized and funded by the United States Senate and House of Representatives, and

WHEREAS, City of Farmington representatives have entered into discussions with representatives of the State and the Navajo Nation regarding the City's water rights and how the City would be affected by the proposed Navajo water rights settlement, and

WHEREAS, as a result of the those discussions, the City, the State and the Navajo Nation have reached an agreement concerning several of the City's major water rights and how they would be presented to the water rights adjudication court and administered by the State, and

WHEREAS, members of the City staff have conducted an analysis of the City's water rights and determined that with the agreement in place regarding the City's major water rights, the City has sufficient rights to satisfy its needs for the future pursuant to the City's Forty Year Water Plan, and

WHEREAS, the proposed settlement, if approved and implemented, will result in the removal of the uncertainties associated with having the large claims of the Navajo Nation unresolved and will allow all parties, including the City, to move forward with water rights and water use planning with confidence and certainty, and

WHEREAS, with these assurances in place, the City Council has determined that it is in the best interest of the City of Farmington and its citizens and water utility customers to support the proposed Navajo Water Rights Settlement, and

WHEREAS, the agreement between the City, the State and the Navajo Nation concerning the City's major water rights is contingent on the City Council adopting a resolution indicating the City's support for the Navajo Water Rights Settlement.

NOW, THEREFORE, BE IT RESOLVED by the City of Farmington that the City endorses and supports the proposed settlement between the State of New Mexico and the Navajo Nation concerning the Navajo Nation's claims to water rights in the San Juan River Basin in New Mexico as set forth in documents issued by the Office of the State Engineer and the Interstate Stream Commission on December 10, 2004, and

BE IT FURTHER RESOLVED that City staff is directed to distribute copies of this resolution to the appropriate officials with the State and the Navajo Nation, and to all members of New Mexico's Congressional delegation.

PASSED, APPROVED, SIGNED AND ADOPTED this ____ day of February, 2005.

William E. Standley, Mayor

(SEAL)

ATTEST:

Gina R. Morris, City Clerk

DRAFT

35-20
Farmington
copy: SJ-17
Navajo Settle.

MEMORANDUM
January 10, 2005

To: John R. D'Antonio, Jr., State Engineer
DL Sanders, Chief, Litigation and Adjudication Program

From: John Whipple, Staff, Interstate Stream Commission

Subject: Explanation of the Agreement between the State of New Mexico, the City of Farmington and the Navajo Nation regarding Terms of Consent Order on Certain of the City's Municipal Use Rights and Trust Rights (Farmington Agreement)

BACKGROUND

The City of Farmington raised concerns regarding possible impacts on the City's water supply of the proposed San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (Navajo Settlement Agreement) and the San Juan River Adjudication (Adjudication). The City requires assurance that certain of its decreed, licensed and permitted rights to the diversion and use of waters from the Animas River will be recognized in the Adjudication by the State of New Mexico and the Navajo Nation as a condition of the City of Farmington supporting the Navajo Settlement Agreement.

Representatives of the State of New Mexico and the City of Farmington negotiated the Terms of Consent Order to determine certain of the City's municipal use water rights and rights pursuant to the "trust" rights that the Echo Ditch Decree adjudicated to the Town of Farmington for irrigation uses within the Town. In accordance with the Farmington Agreement attached hereto, the State of New Mexico would submit to the Court for entry in the Adjudication a consent order of substantially the content of the Terms of Consent Order to describe the water right elements specified therein. The consent order would be submitted after the Court enters the Partial Final Decree described by paragraph 3.0 of the Navajo Settlement Agreement, and the Navajo Nation would agree to not challenge the consent order. Agreement of the Navajo Nation to not challenge Echo Ditch Decree rights, except on the basis of forfeiture or abandonment, pursuant to subparagraph 9.6 of the Navajo Settlement Agreement will be effective at that time. If it is determined that the Court will not enter the Partial Final Decree described by paragraph 3.0 of the Navajo Settlement Agreement, the State of New Mexico still would submit the consent order to the Court for entry in the Adjudication, but the Navajo Nation may challenge the consent order.

The Farmington Agreement would settle, as between the State of New Mexico and the City of Farmington, the City's water right claims that derive from the City's "trust" rights and the City's "10 cfs" municipal water supply right adjudicated by the Echo Ditch Decree, from rights pursuant to Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A, and from rights that derive from License No. 2995. Other rights claimed by the City that derive from either previously decreed irrigation rights that are not the subject of Permit Nos. 01417-1 through

01417-5 and 01417-1A through 01417-5A or that originate from permits or licenses issued after entry of the Echo Ditch Decree would be addressed through additional orders consistent with the hydrographic survey currently under preparation and the adjudication process.

DECREEED AND LICENSED MUNICIPAL USE RIGHTS

The rights described in paragraph 4 of the Terms of Consent Order reflect the municipal and domestic water supply rights generally described by the Echo Ditch Decree at Part 1, Section III, page 64, and specifically decreed to the Town of Farmington at Part 3, pages 213 and 226, of the Decree. The rights described in paragraph 5 of the Terms of Consent Order reflect License No. 2995. The alternate points of diversion described by paragraph 2 of the Terms of Consent Order are the current points of diversion for the City of Farmington's municipal water system.

The language of paragraphs 4 and 5 of the Terms of Consent Order that the City of Farmington is not required to return to the San Juan River stream system any portions of the amounts of water either delivered to or withdrawn from Farmington Lake reflects the fact that the Echo Ditch Decree and the appropriation under License No. 2995, respectively, did not require return flows; and consequently, the City of Farmington may fully consume said amounts. However, full consumption of said amounts will not occur so long as the City returns part of its diversions made pursuant to paragraphs 4 and 5 to the San Juan River stream system, including through discharge of wastewater treatment plant effluent. Under the Farmington Agreement, historic or reasonable return flow is not used to reduce the amount of decreed or licensed diversions that can be consumptively used, nor is it used to increase the amounts of diversions over and above those decreed or appropriated by license.

Although permits for the transfer of irrigation rights to municipal uses by the City of Farmington approved by the State Engineer subsequent to Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A specifically allow for diversions in excess of consumptive use contingent upon demonstration by measurement of return flow, and although Permit No. 4490 for the City of Farmington's diversion and use of water from the Animas River under the Animas-La Plata Project specifically provides for diversions of up to 10,000 af/yr to allow consumptive use of up to 5,000 af/yr contingent upon the State Engineer accepting a return flow plan for determining the amount and disposition of return flow resulting from the diversion and the City demonstrating by measurement that the return flow is being returned to the river, License No. 2995 contains no such provisions for increasing diversions above the amount of water appropriated by the City under the license on the basis of any subsequent submittal of a return flow plan or measurements of return flow, and neither does the Echo Ditch Decree contain such provisions for increasing diversions or deliveries to Farmington Lake above the amounts adjudicated for the Town of Farmington municipal water supply uses described at Part 1, Section III, page 64 and pages 213 and 226 of the Decree. Therefore, the rights described in paragraphs 4 and 5 of the Terms of Consent Order should not be recognized as consumptive use rights for which the City could make additional diversions over and above those described in the respective paragraphs based on measured return flows; rather, additional diversions would constitute new appropriations. Nothing in the Farmington Agreement would prevent the City, however, from implementing engineering or conservation measures to more fully consume the amounts of water provided by paragraphs 4 and 5 of the Terms of Consent Order.

TRUST RIGHTS AND PERMITS 01417

The rights described in paragraph 3 of the Terms of Consent Order would settle differences of opinion between the parties as to the amounts of consumptive use and diversion rights that should be recognized for the City of Farmington pursuant to the City's "trust" rights adjudicated by the Echo Ditch Decree for irrigation use by owners of lots and parcels of land situated within the corporate limits of the City as generally described by the 1948 Echo Ditch Decree at Part 1, Section III, page 64, and pursuant to Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A, which permits were approved in 1964 and 1970, respectively, and transferred irrigation rights from within and outside the corporate limits of the City to municipal and domestic water supply. Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A specified diversion amounts allowed under the permits, but did not specify the amounts of consumptive use transferred from irrigation to municipal uses. Other permits subsequently approved by the State Engineer to transfer irrigation rights to Farmington municipal uses include both consumptive use and diversion amounts in the permits, and are not addressed by the Farmington Agreement.

a. "Trust" Rights

My tabulation of the "trust" rights adjudicated to the Town of Farmington by the Echo Ditch Decree is as follows:

<u>Ditch</u>	<u>Priority</u>	<u>Acres</u>	<u>CIR (af/ac)</u>	<u>Consumptive Use (af)</u>	<u>Water Allotted (af)</u>
Star	1877	419.0	1.94	812.9	2,581.2
Wright-Leggett	1878	419.7	1.93	809.9	2,568.2
Independent	1891	349.9	1.93	675.3	2,141.9
North Farmington	1897	566.1	1.93	1,092.6	3,464.5
Total		1,754.7		3,390.7	10,755.8

The consumptive irrigation requirements (CIR) and consumptive use amounts described above are based on the report of hydrographic survey approved by the Echo Ditch Decree, and the water allotted is the acreage times the farm delivery requirement doubled for excessive losses in small laterals.

Lands for which the 1,754.7 acres of irrigation rights were adjudicated by the Echo Ditch Decree were not clearly identified, and the intent of the court in the Echo Ditch case in adjudicating the "trust" rights to the Town of Farmington is not clear. The Echo Ditch Decree states that the "trust" rights are subject to forfeiture for non-use or other lawful cause. Also, the State Engineer requires identification of the move-from lands to transfer irrigation rights to other uses. Based on mapping prepared by the City of Farmington, the corporate limits of the Town of Farmington encompassed a total of about 2120 acres as of 1947 and the date of entry of the Echo Ditch Decree. Subtraction of the acreage within the Town limits that could not have been irrigated by

gravity flow from the ditches (estimated by the City at about 676 acres including the airport mesa) and the acreage within the Town limits for which individuals were adjudicated rights by the Echo Ditch Decree (estimated by the City at about 532 acres) yields a residual acreage within the corporate limits of the Town of 912 acres, which includes irrigable lands and impervious surfaces such as roads, driveways and rooftops. Of the 912 residual acres, an estimated 619 acres lie within the original 1910 townsite. The Echo Ditch Decree did not adjudicate irrigation rights to individuals within the 1910 townsite. The Office of the State Engineer indicates that less than half of the original townsite area is irrigable.

b. Permits 01417

The City of Farmington in the 1960s was assigned or otherwise acquired from entities or individuals irrigation rights that were adjudicated by the Echo Ditch Decree. Some of the rights were assigned to the City to clear title for the “trust” rights, and others were acquired for increasing the City’s water supply. My review of Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A indicates that the State Engineer approved the following transfers by the City from irrigation uses to municipal water supply under said permits:

<u>Ditch</u>	<u>Priority</u>	<u>Acres</u>	<u>Single-Duty Acres</u>	<u>Double-Duty Acres</u>	<u>Diversion (af)</u>
Star	1877	327.9	306.3	21.6	1,074.4
Wright-Leggett	1878	24.1	9.2	14.9	118.7
Independent	1891	236.7	219.0	17.7	776.7
Echo	1896	8.0	8.0	0.0	24.6
North Farmington	1897	138.7	118.4	20.3	485.1
Total		735.4	660.9	74.5	2,479.8

The amounts described above for Echo Ditch exclude acreage and diversion that subsequently was transferred out to others under other permits. The permits were intended, at least in part, to provide some clarity to the “trust” rights issues, but did not limit the amount of consumptive use or require any return flow from the diversions. However, a party cannot transfer more consumptive use than the amount of the decreed, licensed or permitted consumptive use for the right that is the subject of a transfer.

The permits did limit the annual diversion amounts from the Animas River to the amounts of water allotted from the ditches for the original irrigation uses. The reasoning for the quantification of the diversion limit is not clear, but providing diversions in excess of the consumptive use allows for return flows from municipal uses. The amounts of diversion include about 2,028.4 af associated with 660.9 acres of irrigation rights from lands situated outside the original 1910 townsite (a weighted average of about 3.07 af/ac farm delivery requirement) and about 451.4 af associated with 74.5 acres of “trust” rights for lands apparently located within the original 1910 townsite (a weighted average of about 6.06 af/ac with double-duty).

Of the 660.9 acres of irrigation rights transferred from outside the original 1910 townsite, it is estimated from mapping prepared by the City of Farmington that approximately 160 acres were within the 1947 corporate limits of the Town, and that about 501 acres were outside the 1947 corporate limits of the Town. The 160 acres within the 1947 corporate limits of the Town is a part of the 532 acres within the Town limits for which the Echo Ditch Decree adjudicated irrigation rights to individuals. Other permits held by the City of Farmington and not addressed by the Farmington Agreement involve transfers to municipal uses of an additional 30 acres, plus or minus, of irrigation rights on the Animas River from within the 1947 corporate limits of the City as well as approximately 790 acres of irrigation rights on the Animas and San Juan rivers from outside the 1947 corporate limits. The City of Farmington's records indicate that only about 0.4 acre of move-from lands located within the 1910 corporate limits of the Town was included in transfers to municipal uses in other permits approved by the State Engineer subsequent to Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A.

c. Consumptive Use

The State Engineer on permits approved subsequent to Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A for additional transfers of irrigation rights to municipal uses for the City of Farmington allowed the transfer of the consumptive use associated with irrigation rights based on a long-term average annual consumptive irrigation requirement for the San Juan River Basin in New Mexico of 1.767 af/ac determined from New Mexico State University Agricultural Experiment Station Bulletin 531 using meteorological data at the Bloomfield weather station for the period 1931-1960 and the original Blaney-Criddle method, less 7 percent for acreage considered to be fallow (see M. B. Compton's April 30, 1980, memorandum to Richard Simms on the method used for the administration and processing of water rights adjudicated by the Echo Ditch Decree). The State Engineer thus used a "net" consumptive irrigation requirement of 1.64 af/ac for subsequent transfers of irrigation rights to municipal uses so as to reflect historic use prior to transfer and prevent possible increases in depletions from the San Juan River stream system, and did not consider for this purpose the consumptive irrigation requirements described in the report of hydrographic survey approved by the Echo Ditch Decree that were developed using meteorological data available in the Basin through 1938 and the Lowry-Johnson method.

Applying a "net" consumptive irrigation requirement of 1.64 af/ac to the 912 acres of residual "trust" acreage within the corporate limits of Farmington and the 660.9 acres of single-duty acreage transferred by Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A results in a consumptive use of 1,496 af/yr and 1,084 af/yr, respectively, for a total of 2,580 af/yr. The 74.5 acres of double-duty acreage transferred by said permits was clearly considered a part of the "trust" rights and should be subsumed within the 912 acres of residual "trust" acreage.

d. Diversion

The permits approved subsequent to Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A for additional transfers of irrigation rights to municipal uses for the City of Farmington allowed the diversion for municipal use in an amount equal to the farm delivery requirement at the move-from location as specified by the Echo Ditch Decree. The result was to

allow diversion of up to 3.06 af, plus or minus, and consumptive use of 1.64 af for each acre of irrigation water right transferred, subject to measurement of diversions and return flows in order to receive credit for return flows of up to about 46.4 percent of the diversions. Also, the City of Farmington under Permit No. 4490 for water supply from the Animas-La Plata Project may divert up to 10,000 af/yr from the Animas River as necessary to supply a consumptive use from the San Juan River stream system, after measured return flow, of up to 5,000 af/yr. The Interstate Stream Commission for planning purposes has used a general return flow assumption of 50 percent of diversions for municipal and domestic uses unless measured return flow data or better information are available. The City of Farmington's measured return flows currently amount to more than 40 percent of its diversions, and the City projects that its measured return flows will average approximately 30 percent of diversions when its Bluff View Power Plant is in full operation and consuming by re-use wastewater treatment plant effluent.

Applying a "net" consumptive irrigation requirement of 1.64 af/ac to the 735.4 acres of water rights transferred pursuant to Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A gives a total consumptive use under the permits of 1,206 af/yr, as compared to the total diversion amount under said permits of 2,480 af/yr. The suggested return flow of 1,274 af/yr, or 51 percent of diversions, exceeds the 46.4 percent return flow indicated in subsequent permits due to the double-duty acreage included in Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A. Applying a farm delivery requirement of 3.06 af/ac to both the 912 acres of residual "trust" acreage within the corporate limits of Farmington and the 660.9 acres of single-duty acreage transferred by Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A results in a total amount of 4,813 af/yr.

e. Settlement of Rights

The rights described in paragraph 3 of the Terms of Consent Order would provide for municipal water supply purposes a total diversion of 4,813 af/yr and a total consumptive use or depletion of 2,580 af/yr, which would constitute a full and final settlement between the State of New Mexico and the City of Farmington with respect to any and all rights deriving from the rights previously adjudicated to the Town of Farmington in trust for irrigation of land situated within the corporate limits of the Town generally described by the Echo Ditch Decree at Part 1, Section III, page 64, and from the permits approved by the State Engineer under New Mexico State Engineer File Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A, including from the irrigation rights transferred by said permits. Paragraph 3 would provide for diversions of up to 2,233 af/yr in excess of the full consumptive use amount specified, which would allow for a return flow credit at full use of about 46.4 percent contingent upon measured return flows to the San Juan River at the current location of the Farmington Wastewater Treatment Plant outfall located above the diversion headings of the Fruitland Irrigation Project and the Farmers Mutual Ditch. As part of the Farmington Agreement, there would be no requirement to identify irrigated lands associated with the "trust" rights and the "trust" rights would be designated for municipal use, not irrigation use. Parties to the San Juan River Adjudication other than the Navajo Nation would be allowed to object to the changes in the points of diversion and purpose and place of use for the "trust" rights and to the quantification of rights provided in paragraph 3 of the Terms of Consent Order through an *inter se* process approved by the Court. The maximum diversion rate of 10.0 cfs for the rights described in paragraph 3 of the Terms of Consent Order is based on the

total diversion amount of 4,813 af/yr and an irrigation season demand of three times the non-irrigation season demand.

The total amount of consumptive use under the rights described in paragraph 3 of the Terms of Consent Order is distributed by priority date using the following formula: (1) 1,496 af/yr of consumptive use for the 912 acres of residual "trust" acreage within the corporate limits of Farmington is distributed to ditch priorities in the proportions that each ditch was decreed acres of "trust" rights; and (2) 1,084 af/yr of consumptive use for the 660.9 acres of single-duty acreage transferred by Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A is distributed to ditch priorities in the proportions that single-duty acreage was transferred from each ditch by the subject permits. The total amount and rate of diversion under the rights described in paragraph 3 is pro-rated by priority date based on the resulting pro-rata distribution of the consumptive use. The distribution by priority is as follows:

<u>Priority</u>	<u>Diversion</u>		<u>Consumptive Use</u>		<u>Origin of Rights from Combined Sources</u>	
	<u>(af/yr)</u>	<u>(cfs)</u>	<u>(af/yr)</u>	<u>Ditch</u>	<u>Part 3, Echo Ditch Decree</u>	<u>Permit Numbers</u>
1877	1,603.6	3.33	859.6	Star	pages 132 and 142	01417-1 and -1A
1878	695.7	1.45	372.9	Wright-Leggett	pages 165 and 171	01417-3 and -3A
1891	1,226.6	2.55	657.5	Independent	pages 213 and 226	01417-2 and -2A
1896	24.5	0.05	13.1	Echo		01417-5 and -5A
1897	1,262.6	2.62	676.9	N. Farmington	pages 258 and 267	01417-4 and -4A
Total	4,813.0	10.00	2,580.0			

Agreement Among the
State of New Mexico, the City of Farmington and the Navajo Nation

The State of New Mexico, the City of Farmington and the Navajo Nation, hereinafter referred to as "the Parties," enter into this Agreement under the following terms and conditions:

1. This Agreement is made for the purpose of advancing the settlement of legal disputes, including pending litigation by and among the Parties in the general stream adjudication of the San Juan River Basin in New Mexico being determined in *New Mexico v. United States*, No. 75-184, District Court of San Juan County (San Juan River Adjudication).
2. The provisions of this Agreement, including the attached Terms of Consent Order, and any other written or oral communications related thereto, are covered by Rule 11-408 of the New Mexico Rules of Evidence. The Terms of Consent Order attached hereto and any supporting documentation shall not constitute evidence of water rights claimed by the City of Farmington, and no compromises made in the course of negotiating this Agreement may be used as either evidence or argument by any Party to this Agreement in the San Juan River Adjudication.
3. This Agreement is effective upon execution by the Parties, and may be amended or terminated only by written agreement of all of the Parties.
4. The State of New Mexico and the City of Farmington agree to execute a consent order substantially containing the water right elements described by the Terms of Consent Order attached hereto to determine certain rights of the City of Farmington to divert and use waters of the Animas River, and to submit the consent order to the Court for entry in the San Juan River Adjudication, once all of the following conditions are met:
 - (a) the State of New Mexico and the Navajo Nation execute the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (Settlement Agreement);
 - (b) the Congress approves the Settlement Agreement, and the Secretary of the Interior executes the Settlement Agreement on behalf of the United States; and
 - (c) the Court in the San Juan River Adjudication enters a Partial Final Decree adjudicating the rights of the Navajo Nation to use and administer waters of the San Juan River Basin as described in paragraph 3.0 of the Settlement Agreement.

The City of Farmington acknowledges that the content and form of the consent order will include, in addition to the terms attached hereto, standard provisions required by either the Court or the State Engineer.

5. Even if the conditions described in paragraph 4 are not met in accordance with the associated milestone dates for said conditions described in the Settlement Agreement, the State of New Mexico agrees to execute a consent order containing the water right elements described by the Terms of Consent Order attached hereto, and to submit the consent order to the Court for entry in the San Juan River Adjudication, so long as the City of Farmington has fulfilled the commitment described in paragraph 8 of this Agreement for the City to support the Settlement Agreement, including enabling legislation, and has not caused conditions (b) or (c) of paragraph 4 to not be met.
6. The Navajo Nation agrees to not challenge the consent order submitted to the Court for entry in the San Juan River Adjudication pursuant to paragraph 4 so long as:
 - (a) the Settlement Agreement has not been terminated pursuant to subparagraph 11.2 of the Settlement Agreement;
 - (b) the consent order submitted to the Court for entry in the San Juan River Adjudication in accordance with paragraph 4 is substantially of the content of the Terms of Consent Order attached hereto; and
 - (c) the City of Farmington has fulfilled the commitment described in paragraph 8 of this Agreement.
7. Paragraph 6 constitutes the entire agreement of the Navajo Nation as to the quantification of the City of Farmington's rights to be determined and settled by the consent order described in paragraph 4. The Navajo Nation may challenge the consent order if the consent order is submitted to the Court in the San Juan River Adjudication pursuant to paragraph 5 or if any of the conditions specified in paragraph 6 are not met. In the event that the Navajo Nation challenges the consent order and the Settlement Agreement has not been terminated pursuant to subparagraph 11.2 of the Settlement Agreement, the Navajo Nation shall be bound by the provisions of subparagraph 9.6 of the Settlement Agreement with respect to the challenge of the City's rights that are the subject of the Terms of Consent Order.
8. The City of Farmington agrees to actively support the Settlement Agreement, including passage of the Congressional legislation described in paragraph 5.0 of the Settlement Agreement and the Court's entry in the San Juan River Adjudication of the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement.
9. This Agreement constitutes the entire understanding among the Parties.

In witness whereof, the Parties hereto have duly executed this Agreement.

STATE OF NEW MEXICO

By: _____ Date: _____
John R. D'Antonio, State Engineer

By: _____ Date: _____
D.L. Sanders, Chief Counsel
Office of the State Engineer

CITY OF FARMINGTON

By: _____ Date: _____
William E. Standley, Mayor

Attest: _____ Date: _____
City Clerk

By: _____ Date: _____
Jay Burnham, City Attorney

NAVAJO NATION

By: _____ Date: _____
Louis Denetsosie, Attorney General

By: _____ Date: _____
Stanley M. Pollack, Water Rights Counsel
Navajo Nation Department of Justice

TERMS OF CONSENT ORDER

The State of New Mexico and the City of Farmington agree to the following terms of a consent order to describe elements of certain of the City's rights to divert and use the waters of the San Juan River Stream System:

1. Origination. The water rights described by paragraphs 3 and 4 derive from rights previously adjudicated in the case of *Echo Ditch Company, et al. v. The McDermett Ditch Company, et al.*, San Juan County District Court, Cause No. 01690 (April 8, 1949), which decree is known as the "Echo Ditch Decree," and include rights adjudicated to the Town of Farmington by the Echo Ditch Decree and rights adjudicated to other entities or persons that have been transferred to municipal use by the City pursuant to permits approved by the State Engineer under New Mexico State Engineer File Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A. The water rights described by paragraph 5 are in accordance with the License approved by the State Engineer pursuant to New Mexico State Engineer File No. 2995.

2. General Elements. The following elements apply to the water rights described in paragraphs 3 through 5:

(a) The rights described in paragraphs 3 through 5 are for the diversion of water from the Animas River, a tributary of the San Juan River; except, that the rights described in paragraph 5 also may be supplied by diversion or storage of water originating in the drainage above the City of Farmington's municipal storage reservoir described in paragraph 5.

(b) The rights described in paragraphs 3 through 5 are for the diversion and use of water for municipal water supply purposes, including municipal, domestic, industrial, commercial, and residential uses.

(c) The alternate points of diversion from the Animas River for the rights described in paragraphs 3 through 5 are as follows:

(1) heading of the Farmers Ditch located on the Animas River at a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, T.31N., R.11W., N.M.P.M., whence the West $\frac{1}{4}$ corner of said Section 26 bears S 82° 02' W, 998.5 feet distant;

(2) pumping station on the Animas River (commonly referred to as Animas Pump Station #2) located at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T.30N., R.12W., N.M.P.M., whence the NW corner of said Section 28 bears N 43° 41' 35" W, 3995.04 feet distant; and

(3) pumping station on the Willett Ditch (commonly referred to as Animas Pump Station #1) located at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, T.29N., R.13W., N.M.P.M., whence the NE corner of said Section 14 bears N 89° 00' E, 2380 feet distant.

(d) The rights described in paragraphs 3 through 5 are to supply uses within the geographic areas in New Mexico that can be served by the City of Farmington's existing municipal water system facilities and any future extensions of the water system facilities, including areas outside the corporate limits of the City that are connected to the water system and served through contracts for delivery of City water such as contracts entered historically by the City for delivery of water to the Lower Valley Water Users Association, the Upper La Plata Water Users Association and the Shiprock Navajo Tribal Utility Authority for uses within their water service areas.

(e) The City of Farmington shall not be entitled hereafter to increase diversions in association with the rights to consume the amounts of water described in

paragraphs 3 through 5 over and above the amounts of diversion specified by the respective paragraphs regardless of actual return flows of portions of said amounts of diversion to the San Juan River Stream System; except, that diversions pursuant to paragraph 3 may be greater than the consumptive use described in that paragraph depending upon measured return flows to the extent provided by paragraph 3.

(f) The City of Farmington shall measure diversions and deliveries of water made pursuant to paragraphs 3 through 5 at the points of diversion and delivery described therein, and shall measure return flows to the river from diversions made pursuant to paragraph 3, as necessary to demonstrate that the diversions and deliveries of water are in accordance with the provisions of the respective paragraphs and that the consumptive uses described by the respective paragraphs are not exceeded.

(g) The City of Farmington shall measure and record storage in the Farmington municipal reservoir described in paragraph 5 as well as diversions from reservoir storage.

(h) Records of diversions, deliveries, storage and return flows for each calendar month obtained from measurements made pursuant to subparagraphs (f) and (g) of this paragraph shall be submitted to the New Mexico State Engineer no later than the tenth day of the following month.

3. Trust Rights and Permits 01417. Pursuant to the rights previously adjudicated to the Town of Farmington in trust for irrigation use by owners of lots and parcels of land situated within the corporate limits of the Town as generally described by the Echo Ditch Decree at Part 1, Section III, page 64, and pursuant to the permits approved by the State Engineer under New Mexico State Engineer File Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A, the

City of Farmington has rights to divert 4,813 acre-feet, or the quantity of water necessary to supply a consumptive use of 2,580 acre-feet, whichever is less, of surface water in any one year from the Animas River, with a maximum diversion rate of 10.0 cubic-feet-per-second (cfs), at the alternate points of delivery described in subparagraph 2(c). The priorities of the diversion rights under this paragraph are as follows:

(a) a diversion of 1,603.6 acre-feet, or the quantity of water necessary to supply a consumptive use of 859.6 acre-feet, whichever is less, in any year, at a maximum diversion rate of 3.33 cfs, with a priority date of 1877, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 132 and 142, and from Permits Nos. 01417-1 and 01417-1A;

(b) a diversion of 695.7 acre-feet, or the quantity of water necessary to supply a consumptive use of 372.9 acre-feet, whichever is less, in any year, at a maximum diversion rate of 1.45 cfs, with a priority date of 1878, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 165 and 171, and from Permits Nos. 01417-3 and 01417-3A;

(c) a diversion of 1,226.6 acre-feet, or the quantity of water necessary to supply a consumptive use of 657.5 acre-feet, whichever is less, in any year, at a maximum diversion rate of 2.55 cfs, with a priority date of 1891, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 213 and 226, and from Permits Nos. 01417-2 and 01417-2A;

(d) a diversion of 24.5 acre-feet, or the quantity of water necessary to supply a consumptive use of 13.1 acre-feet, whichever is less, in any year, at a maximum diversion

rate of 0.05 cfs, with a priority date of 1896, deriving from Permits Nos. 01417-5 and 01417-5A; and

(e) a diversion of 1,262.6 acre-feet, or the quantity of water necessary to supply a consumptive use of 676.9 acre-feet, whichever is less, in any year, at a maximum diversion rate of 2.62 cfs, with a priority date of 1897, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 258 and 267, and from Permits Nos. 01417-4 and 01417-4A.

The diversions by the City of Farmington pursuant to this paragraph shall be limited to the amounts of consumptive use described in this paragraph; except, that the City in any year may increase diversions over and above the described amounts of consumptive use up to the maximum amounts of diversions described in this paragraph provided that the City measures the actual amounts of return flows resulting from the diversions made pursuant this paragraph demonstrating that up to 2,233 acre-feet of the diversions are being returned in that year to the San Juan River at the current location of the Farmington Wastewater Treatment Plant outfall, but may only so increase the diversions by the measured amount being returned.

4. Decreed Municipal Use Rights. Pursuant to the rights previously adjudicated to the Town of Farmington for municipal water supply purposes as generally described by the Echo Ditch Decree at Part 1, Section III, page 64, the City of Farmington has the right to divert 7,240 acre-feet, or the quantity of water necessary to supply a delivery of 3,620 acre-feet to the Farmington municipal reservoir described in paragraph 5 or to the Farmington municipal water supply system directly if not to storage, whichever is less, of surface water from the Animas River in any year, at a maximum diversion rate of 10.0 cfs, or the rate of flow necessary to deliver 5.0 cfs to the Farmington municipal reservoir or to the Farmington municipal water

supply system directly if not to storage, whichever is less, and with a priority date of 1877. The City may divert water under the rights described in this paragraph at the alternate points of delivery described in subparagraph 2(c). The rights under this paragraph derive from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 213 and 226. The City may consumptively use or deplete the full amount of water delivered to the Farmington municipal reservoir pursuant to this paragraph, including by reservoir evaporation, and is not required to return any portion of the delivery to the reservoir to the San Juan River Stream System.

5. License 2995. Pursuant to License No. 2995, the City of Farmington has the right with a priority date of August 20, 1959, to divert at a maximum rate of 50.0 cfs from the Animas River at the alternate points of delivery described in subparagraphs 2(c)(1) and 2(c)(2), or from the drainage above the Farmington municipal reservoir described in this paragraph, or from both sources in combination, as necessary to fill and refill as often as water is available 6,855 acre-feet of storage capacity in the Farmington municipal reservoir and to supply a diversion from reservoir storage of 7,200 acre-feet in any year. The City may consumptively use or deplete the full amount of water diverted from the Farmington municipal reservoir pursuant to this paragraph, and is not required to return any portion of the diversion from the reservoir to the San Juan River Stream System. The Farmington municipal reservoir is commonly known as "Farmington Lake" and is formed by the storage dam located at a point in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, T.30N., R.12W., N.M.P.M., whence the SW corner of said Section 21 bears S 61° 44' W, 3014.1 feet distant.

6. Settlement in Full. The rights described in paragraphs 2 and 3 comprise in full the rights of the City of Farmington deriving from the rights previously adjudicated to the Town of

Farmington in trust for irrigation use by owners of lots and parcels of land situated within the corporate limits of the Town generally described by the Echo Ditch Decree at Part 1, Section III, page 64, and the rights of the City pursuant to Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A. The rights described in paragraphs 2 and 4 comprise in full the rights of the City deriving from the rights previously adjudicated to the Town of Farmington for municipal water supply purposes generally described by the Echo Ditch Decree at Part 1, Section III, page 64. The rights described in paragraphs 2 and 5 comprise in full the rights of the City deriving from the appropriation of water pursuant to License No. 2995.

*5J-
Farmington rights
agreement*

John Whipple

From: John Whipple
Sent: Monday, January 10, 2005 5:29 PM
To: jburnham; johnleeper; spollack; utton
Cc: bfrederick; dsanders; jdantonio; jwhipple; pabernethy
Subject: Farmington agreement

All:

Verbal agreement at the staff level has been reached on the State-Farmington-Navajo agreement as attached, including by DL, Jay and Stanley, respectively. Farmington staff anticipate submitting the agreement to the City Council for approval on January 25.

John Whipple



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ent.011005.do... 11005.doc 11005.doc

SJ-
Farmington
agreement

Agreement Among the
State of New Mexico, the City of Farmington and the Navajo Nation

The State of New Mexico, the City of Farmington and the Navajo Nation, hereinafter referred to as "the Parties," enter into this Agreement under the following terms and conditions:

1. This Agreement is made for the purpose of advancing the settlement of legal disputes, including pending litigation by and among the Parties in the general stream adjudication of the San Juan River Basin in New Mexico being determined in *New Mexico v. United States*, No. 75-184, District Court of San Juan County (San Juan River Adjudication).
2. The provisions of this Agreement, including the attached Terms of Consent Order, and any other written or oral communications related thereto, are covered by Rule 11-408 of the New Mexico Rules of Evidence. The Terms of Consent Order attached hereto and any supporting documentation shall not constitute evidence of water rights claimed by the City of Farmington, and no compromises made in the course of negotiating this Agreement may be used as either evidence or argument by any Party to this Agreement in the San Juan River Adjudication.
3. This Agreement is effective upon execution by the Parties, and may be amended or terminated only by written agreement of all of the Parties.
4. The State of New Mexico and the City of Farmington agree to execute a consent order substantially containing the water right elements described by the Terms of Consent Order attached hereto to determine certain rights of the City of Farmington to divert and use waters of the Animas River, and to submit the consent order to the Court for entry in the San Juan River Adjudication, once all of the following conditions are met:
 - (a) the State of New Mexico and the Navajo Nation execute the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (Settlement Agreement);
 - (b) the Congress approves the Settlement Agreement, and the Secretary of the Interior executes the Settlement Agreement on behalf of the United States; and
 - (c) the Court in the San Juan River Adjudication enters a Partial Final Decree adjudicating the rights of the Navajo Nation to use and administer waters of the San Juan River Basin as described in paragraph 3.0 of the Settlement Agreement.

The City of Farmington acknowledges that the content and form of the consent order will include, in addition to the terms attached hereto, standard provisions required by either the Court or the State Engineer.

5. Even if the conditions described in paragraph 4 are not met in accordance with the associated milestone dates for said conditions described in the Settlement Agreement, the State of New Mexico agrees to execute a consent order containing the water right elements described by the Terms of Consent Order attached hereto, and to submit the consent order to the Court for entry in the San Juan River Adjudication, so long as the City of Farmington has fulfilled the commitment described in paragraph 8 of this Agreement for the City to support the Settlement Agreement, including enabling legislation, and has not caused conditions (b) or (c) of paragraph 4 to not be met.
6. The Navajo Nation agrees to not challenge the consent order submitted to the Court for entry in the San Juan River Adjudication pursuant to paragraph 4 so long as:
 - (a) the Settlement Agreement has not been terminated pursuant to subparagraph 11.2 of the Settlement Agreement;
 - (b) the consent order submitted to the Court for entry in the San Juan River Adjudication in accordance with paragraph 4 is substantially of the content of the Terms of Consent Order attached hereto; and
 - (c) the City of Farmington has fulfilled the commitment described in paragraph 8 of this Agreement.
7. Paragraph 6 constitutes the entire agreement of the Navajo Nation as to the quantification of the City of Farmington's rights to be determined and settled by the consent order described in paragraph 4. The Navajo Nation may challenge the consent order if the consent order is submitted to the Court in the San Juan River Adjudication pursuant to paragraph 5 or if any of the conditions specified in paragraph 6 are not met. In the event that the Navajo Nation challenges the consent order and the Settlement Agreement has not been terminated pursuant to subparagraph 11.2 of the Settlement Agreement, the Navajo Nation shall be bound by the provisions of subparagraph 9.6 of the Settlement Agreement with respect to the challenge of the City's rights that are the subject of the Terms of Consent Order.
8. The City of Farmington agrees to actively support the Settlement Agreement, including passage of the Congressional legislation described in paragraph 5.0 of the Settlement Agreement and the Court's entry in the San Juan River Adjudication of the Partial Final Decree described in paragraph 3.0 of the Settlement Agreement.
9. This Agreement constitutes the entire understanding among the Parties.

In witness whereof, the Parties hereto have duly executed this Agreement.

STATE OF NEW MEXICO

By: _____ Date: _____
John R. D'Antonio, State Engineer

By: _____ Date: _____
D.L. Sanders, Chief Counsel
Office of the State Engineer

CITY OF FARMINGTON

By: _____ Date: _____
William E. Standley, Mayor

Attest: _____ Date: _____
City Clerk

By: _____ Date: _____
Jay Burnham, City Attorney

NAVAJO NATION

By: _____ Date: _____
Louis Denetsosie, Attorney General

By: _____ Date: _____
Stanley M. Pollack, Water Rights Counsel
Navajo Nation Department of Justice

TERMS OF CONSENT ORDER

The State of New Mexico and the City of Farmington agree to the following terms of a consent order to describe elements of certain of the City's rights to divert and use the waters of the San Juan River Stream System:

1. Origination. The water rights described by paragraphs 3 and 4 derive from rights previously adjudicated in the case of *Echo Ditch Company, et al. v. The McDermott Ditch Company, et al.*, San Juan County District Court, Cause No. 01690 (April 8, 1949), which decree is known as the "Echo Ditch Decree," and include rights adjudicated to the Town of Farmington by the Echo Ditch Decree and rights adjudicated to other entities or persons that have been transferred to municipal use by the City pursuant to permits approved by the State Engineer under New Mexico State Engineer File Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A. The water rights described by paragraph 5 are in accordance with the License approved by the State Engineer pursuant to New Mexico State Engineer File No. 2995.

2. General Elements. The following elements apply to the water rights described in paragraphs 3 through 5:

(a) The rights described in paragraphs 3 through 5 are for the diversion of water from the Animas River, a tributary of the San Juan River; except, that the rights described in paragraph 5 also may be supplied by diversion or storage of water originating in the drainage above the City of Farmington's municipal storage reservoir described in paragraph 5.

(b) The rights described in paragraphs 3 through 5 are for the diversion and use of water for municipal water supply purposes, including municipal, domestic, industrial, commercial, and residential uses.

(c) The alternate points of diversion from the Animas River for the rights described in paragraphs 3 through 5 are as follows:

(1) heading of the Farmers Ditch located on the Animas River at a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, T.31N., R.11W., N.M.P.M., whence the West $\frac{1}{4}$ corner of said Section 26 bears S 82° 02' W, 998.5 feet distant;

(2) pumping station on the Animas River (commonly referred to as Animas Pump Station #2) located at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T.30N., R.12W., N.M.P.M., whence the NW corner of said Section 28 bears N 43° 41' 35" W, 3995.04 feet distant; and

(3) pumping station on the Willett Ditch (commonly referred to as Animas Pump Station #1) located at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, T.29N., R.13W., N.M.P.M., whence the NE corner of said Section 14 bears N 89° 00' E, 2380 feet distant.

(d) The rights described in paragraphs 3 through 5 are to supply uses within the geographic areas in New Mexico that can be served by the City of Farmington's existing municipal water system facilities and any future extensions of the water system facilities, including areas outside the corporate limits of the City that are connected to the water system and served through contracts for delivery of City water such as contracts entered historically by the City for delivery of water to the Lower Valley Water Users Association, the Upper La Plata Water Users Association and the Shiprock Navajo Tribal Utility Authority for uses within their water service areas.

(e) The City of Farmington shall not be entitled hereafter to increase diversions in association with the rights to consume the amounts of water described in

paragraphs 3 through 5 over and above the amounts of diversion specified by the respective paragraphs regardless of actual return flows of portions of said amounts of diversion to the San Juan River Stream System; except, that diversions pursuant to paragraph 3 may be greater than the consumptive use described in that paragraph depending upon measured return flows to the extent provided by paragraph 3.

(f) The City of Farmington shall measure diversions and deliveries of water made pursuant to paragraphs 3 through 5 at the points of diversion and delivery described therein, and shall measure return flows to the river from diversions made pursuant to paragraph 3, as necessary to demonstrate that the diversions and deliveries of water are in accordance with the provisions of the respective paragraphs and that the consumptive uses described by the respective paragraphs are not exceeded.

(g) The City of Farmington shall measure and record storage in the Farmington municipal reservoir described in paragraph 5 as well as diversions from reservoir storage.

(h) Records of diversions, deliveries, storage and return flows for each calendar month obtained from measurements made pursuant to subparagraphs (f) and (g) of this paragraph shall be submitted to the New Mexico State Engineer no later than the tenth day of the following month.

3. Trust Rights and Permits 01417. Pursuant to the rights previously adjudicated to the Town of Farmington in trust for irrigation use by owners of lots and parcels of land situated within the corporate limits of the Town as generally described by the Echo Ditch Decree at Part 1, Section III, page 64, and pursuant to the permits approved by the State Engineer under New Mexico State Engineer File Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A, the

City of Farmington has rights to divert 4,813 acre-feet, or the quantity of water necessary to supply a consumptive use of 2,580 acre-feet, whichever is less, of surface water in any one year from the Animas River, with a maximum diversion rate of 10.0 cubic-feet-per-second (cfs), at the alternate points of delivery described in subparagraph 2(c). The priorities of the diversion rights under this paragraph are as follows:

(a) a diversion of 1,603.6 acre-feet, or the quantity of water necessary to supply a consumptive use of 859.6 acre-feet, whichever is less, in any year, at a maximum diversion rate of 3.33 cfs, with a priority date of 1877, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 132 and 142, and from Permits Nos. 01417-1 and 01417-1A;

(b) a diversion of 695.7 acre-feet, or the quantity of water necessary to supply a consumptive use of 372.9 acre-feet, whichever is less, in any year, at a maximum diversion rate of 1.45 cfs, with a priority date of 1878, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 165 and 171, and from Permits Nos. 01417-3 and 01417-3A;

(c) a diversion of 1,226.6 acre-feet, or the quantity of water necessary to supply a consumptive use of 657.5 acre-feet, whichever is less, in any year, at a maximum diversion rate of 2.55 cfs, with a priority date of 1891, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 213 and 226, and from Permits Nos. 01417-2 and 01417-2A;

(d) a diversion of 24.5 acre-feet, or the quantity of water necessary to supply a consumptive use of 13.1 acre-feet, whichever is less, in any year, at a maximum diversion

rate of 0.05 cfs, with a priority date of 1896, deriving from Permits Nos. 01417-5 and 01417-5A; and

(e) a diversion of 1,262.6 acre-feet, or the quantity of water necessary to supply a consumptive use of 676.9 acre-feet, whichever is less, in any year, at a maximum diversion rate of 2.62 cfs, with a priority date of 1897, deriving from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 258 and 267, and from Permits Nos. 01417-4 and 01417-4A.

The diversions by the City of Farmington pursuant to this paragraph shall be limited to the amounts of consumptive use described in this paragraph; except, that the City in any year may increase diversions over and above the described amounts of consumptive use up to the maximum amounts of diversions described in this paragraph provided that the City measures the actual amounts of return flows resulting from the diversions made pursuant this paragraph demonstrating that up to 2,233 acre-feet of the diversions are being returned in that year to the San Juan River at the current location of the Farmington Wastewater Treatment Plant outfall, but may only so increase the diversions by the measured amount being returned.

4. Decreed Municipal Use Rights. Pursuant to the rights previously adjudicated to the Town of Farmington for municipal water supply purposes as generally described by the Echo Ditch Decree at Part 1, Section III, page 64, the City of Farmington has the right to divert 7,240 acre-feet, or the quantity of water necessary to supply a delivery of 3,620 acre-feet to the Farmington municipal reservoir described in paragraph 5 or to the Farmington municipal water supply system directly if not to storage, whichever is less, of surface water from the Animas River in any year, at a maximum diversion rate of 10.0 cfs, or the rate of flow necessary to deliver 5.0 cfs to the Farmington municipal reservoir or to the Farmington municipal water

supply system directly if not to storage, whichever is less, and with a priority date of 1877. The City may divert water under the rights described in this paragraph at the alternate points of delivery described in subparagraph 2(c). The rights under this paragraph derive from the rights decreed to the Town of Farmington specifically described by the Echo Ditch Decree at Part 3, pages 213 and 226. The City may consumptively use or deplete the full amount of water delivered to the Farmington municipal reservoir pursuant to this paragraph, including by reservoir evaporation, and is not required to return any portion of the delivery to the reservoir to the San Juan River Stream System.

5. License 2995. Pursuant to License No. 2995, the City of Farmington has the right with a priority date of August 20, 1959, to divert at a maximum rate of 50.0 cfs from the Animas River at the alternate points of delivery described in subparagraphs 2(c)(1) and 2(c)(2), or from the drainage above the Farmington municipal reservoir described in this paragraph, or from both sources in combination, as necessary to fill and refill as often as water is available 6,855 acre-feet of storage capacity in the Farmington municipal reservoir and to supply a diversion from reservoir storage of 7,200 acre-feet in any year. The City may consumptively use or deplete the full amount of water diverted from the Farmington municipal reservoir pursuant to this paragraph, and is not required to return any portion of the diversion from the reservoir to the San Juan River Stream System. The Farmington municipal reservoir is commonly known as "Farmington Lake" and is formed by the storage dam located at a point in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, T.30N., R.12W., N.M.P.M., whence the SW corner of said Section 21 bears S 61° 44' W, 3014.1 feet distant.

6. Settlement in Full. The rights described in paragraphs 2 and 3 comprise in full the rights of the City of Farmington deriving from the rights previously adjudicated to the Town of

Farmington in trust for irrigation use by owners of lots and parcels of land situated within the corporate limits of the Town generally described by the Echo Ditch Decree at Part 1, Section III, page 64, and the rights of the City pursuant to Permit Nos. 01417-1 through 01417-5 and 01417-1A through 01417-5A. The rights described in paragraphs 2 and 4 comprise in full the rights of the City deriving from the rights previously adjudicated to the Town of Farmington for municipal water supply purposes generally described by the Echo Ditch Decree at Part 1, Section III, page 64. The rights described in paragraphs 2 and 5 comprise in full the rights of the City deriving from the appropriation of water pursuant to License No. 2995.