

**MINUTES OF THE
NEW MEXICO INTERSTATE STREAM COMMISSION**

March 17, 2004

The regular meeting of the State of New Mexico Interstate Stream Commission (ISC) was called to order on March 17, 2004, by Chairman Jim Dunlap at 9:30 a.m. at Exhibit Hall #2, Farmington Civic Center, 200 West Arrington, Farmington, New Mexico.

Quorum of Members Present:

Chairman Jim Dunlap
Julia Davis Stafford
Patricio Garcia
Blane Sanchez
Phelps White
Buford Harris
Judith Espinosa
Secretary John D'Antonio

OSE/ISC Staff Present:

Director Estevan López
Bhasker Rao
John Whipple
C. Schatzman
Karen Fisher
Dan Rubin
D. L. Sanders

ISC Contractors:

John Utton
M. Lee Pease
Robert Richardson, PE, Bohannon Huston

Others:

Paul Aguilar, LFC

AGENDA ITEM #1 – COMMISSION CONVENES:

Chairman Jim Dunlap convened the regular meeting of the Interstate Stream Commission at 9:30 a.m.

AGENDA ITEM # 2 - APPROVAL OF THE AGENDA [Attachment 1]:

Director López stated that the agenda before the commissioners was the final agenda and there were no recommended changes.

Commissioner Stafford moved, Commissioner Espinosa seconded, to approve the meeting agenda. The motion carried unanimously.

AGENDA ITEM #3 - CLOSED SESSION--discussions regarding current and threatened litigation and the acquisition of real property and water rights in accordance with the Open Meetings Act, NMSA 1978, Chapter 10, Article 15, Section 1, Subsections H(7) and H(8):

OSE-2543

Commissioner Stafford moved, Commissioner Garcia seconded, to meet in closed session pursuant to the provisions of the Open Meetings Act NMSA 1978, Chapter 10, Article 15, Section 1, Subsection H(7) and H(8). A roll call vote was taken as follows:

Commissioner Stafford – yes
Commissioner Espinosa – yes
Commissioner Wilcox - yes
Commissioner Garcia - yes
Commissioner Sanchez - yes
Commissioner Harris – yes
Vice Chairman Phelps White – yes
Secretary D'Antonio - yes
Chairman Dunlap – yes

The Commission met in executive session.

The Commission recessed the executive session at 12:05 p.m.

AGENDA ITEM #7 – PRESENTATION BY THE VILLAGE OF RUIDOSO REGARDING SENATE MEMORIAL 19. THE RETURN OF WATER FROM BONITO LAKE TO THE PECOS RIVER SYSTEM:

Leon Eggleston, mayor of the Village of Ruidoso, thanked the Commission for allowing the Village of Ruidoso to come before them on this matter. Mr. Eggleston introduced Tom Turney, an engineer advisor, and Bob Underwood the attorney and lobbyist for Ruidoso.

Tom Turney presented a presentation utilizing power point hand-outs entitled *“Bonito Lake: Source of Supply for State to meet its Obligations under the Pecos River Compact as well as its use a Regional Municipal Water Supply.”* [See Attachment 2]

Mr. Turney summarized his presentation by stating that he believed the use of Bonito Lake water to help satisfy compact requirements and also as a source of municipal water for the region would be a win-win situation for the state.

Questions from the Commissioners:

Commissioner Wilcox inquired about the per capita water use in the area.

Mr. Turney responded it is approximately .18 acre-foot per residence, which is very low. In comparison, Albuquerque uses approximately .42 acre-foot per residence; .18 acre-foot is less than 100 gallons of water per capita per day.

Commissioner White inquired as to the number of protests they have had to deal with in respect to the desalination project in the Tularosa Basin.

Leon Eggleston responded that he had heard that there were some protests by residents in the area, but since it is not their project they have not been following that very closely.

Commissioner White commented that that project would solve the dilemma being experienced with Bonito Lake. That project would get Bonito Lake water onto the east side of the Sacramento Mountains. If there were impairment because of protests by Tularosa residents, it would slow the entire process down. Commissioner White went on to say that he was in total support of any project that would get Bonito Lake water to the east side of the mountains, but the Salt River Project could be a more expeditious project than the Tularosa Basin project. This is because the ISC has already filed on the water rights down there and there are protests of that filing. Commissioner White stated those applications were filed because of individuals in Texas buying land to take that water to El Paso and the same thing can happen with the Bonito Lake transfer that occurred in the Mesilla Valley.

Mr. Turney commented that what they are proposing will allow New Mexico waters to be used in New Mexico instead of going to Texas.

Commissioner White stated that it is a tremendous accomplishment to get 2700 acre-feet of new water to the east side of the mountains. He said he would be surprised if any of that water made it to the Pecos River, except through groundwater percolation. The water rights of the Hondo River are senior to those of Carlsbad and those irrigators up and down the Hondo are not going to let that water get by.

Commissioner Sanchez inquired about the comment that potential return flows reaching the state line would be something less than 800 acre-feet. He wanted to know if the group could be more specific about the amount of return flow that would reach the state line.

Mr. Turney responded that those exact figures would have to be computed by the ISC staff, but that he could say that if we took 3900 acre-feet of water for the Village of Ruidoso, you would get about 2700 acre-feet of water into the Rio Ruidoso. How much of that that would make it to the state line, he could not predict. Mr. Turney went on to say that the 2700 acre-feet would be water that would be discharged out of the Ruidoso wastewater treatment plant into the river.

Commissioner Sanchez asked if there are any potential impacts or concerns that the Mescalero Tribe might have on this transfer?

Mr. Turney stated that he could not see any problems, that these would be adjudicated water rights. They would not impact the Mescaleros.

Commissioner Sanchez stated that he thought it might be a good approach if the Ruidoso group attempted to partner with the Mescalero Tribe to support the transfer.

Mr. Underwood commented that they had had a meeting with Mescalero President Chino and the Vice President and talked about water issues. He does not believe there will be any problem with a resolution or whatever they need from the Mescalero Apache Tribe to support the transfer.

Commissioner Espinosa asked what was being done with conservation to assist in meeting the projected demand figures for the Village of Ruidoso through the year 2044.

Mr. Eggleston responded that they have a conservation program that has reduced consumption. They presently are in phase 3; no one gets to water their yard at all. The residents can water outside plants by capturing water in containers. They cannot lay a hose down in a flowerbed, and there has been very good cooperation by the residents. Mr. Eggleston stated that the program has been ongoing for the past three years.

Commissioner Stafford asked if the water rights held by Alamogordo would be sold to the Village of Ruidoso, what mechanism would be used to accomplish the transfer of the rights?

Mr. Eggleston stated that they have had discussions with the City of Alamogordo regarding the return of the Bonito Lake and that the message that they got from them was that it was not something they were looking forward to until we found some alternate supply of water for them. When they filed the Senate Memorial, they went to the State Senator that represents the Alamogordo area to give her a "heads up" on the issues. It is their hope that the applications they have filed in the Tularosa Basin will provide a water supply for the Alamogordo/Holloman area and/or the Salt Basin. They have not gotten to the mechanics of how that water will be provided but hopefully through the current ongoing study they will be able to get there.

Mr. Turney added that they have also contacted congressional staff because the United States actually owns half of those water rights. Holloman Air Force Base has been adjudicated 1449 acre-feet. So it would take congressional action to return those water rights. The congressional staff's support of the National Research Desalination Plant was to attempt to find an alternate source of water for the Alamogordo/Holloman area.

Chairman Dunlap asked if the White Oaks and Crenshaw water supplies were in the Tularosa Basin and if so, whether they could possibly go to Tularosa.

Mr. Turney responded that the White Oak and Crenshaw supplies were in the Tularosa Basin. The current application was filed when he was the State Engineer, and it was for approximately 2700 acre-feet, water rights appurtenant to about 510 acres of property. Inspections had been made by staff of the State Engineer to determine what land was being irrigated. In the early 1980's one of the investigations found 100 acres of land being irrigated and 200 to 210 acres being fallowed. When the application was filed, the Las Cruces Office of the State Engineer looked at aerial photographs over a period of time and chose to discount the earlier field investigations and made a determination that only about 20 acres of land were being irrigated. That is basically where the application stands today; it has been protested, and the State Engineer's office has made the recommendation that there are water rights for only about 20 acres.

Chairman Dunlap asked about the status of the White Oaks supply.

Mr. Eggleston responded that they had applied for the 3500 acre-feet of un-appropriated water approximately a year and a half ago. But it was in the White Oaks area, and they actually filed for that un-appropriated water after they started negotiating with Crenshaw for his water rights. Mr. Underwood said that it was his understanding that the people in that area have applied for a total of 10,000 acre-feet of the un-appropriated water. Right now in the White Oaks area, they have applied for 3,500 acre-feet, and there are about 77 protests. On the Crenshaw application there is still one protest outstanding.

Chairman Dunlap reiterated that there was only one protest pending for White Oaks and 77 on the Crenshaw application.

Mr. Eggleston responded that he had been following the information on the different people that have been filing for un-appropriated water and the Village of Ruidoso has the most protests.

Chairman Dunlap asked what kind of hydrology proves that this water is available.

Mr. Eggleston stated that on the Crenshaw application Shomaker & Associates have prepared a report that shows that the water is available.

Mr. Turney added that the Shomaker report was prepared in 2001 and found that there is a natural recharge in the neighborhood of 3,000 acre-feet of water per year in the Crenshaw area; and, presently he has reported a firm yield of 1,000 acre-feet, for 40 years, which would be sustainable to develop the Crenshaw water supply.

Chairman Dunlap inquired from where the 5,500 acre-feet of un-appropriated water would come? Is it a fact that there are 5,500 acre-feet of un-appropriated water in this area?

Mr. Eggleston responded that he did not know that there was that amount.

Chairman Dunlap said that it was his understanding that Mr. Eggleston had said there is 5,500.

Mr. Eggleston stated that he had said 3,500. Shomaker's report has affirmed that there is probably that much there.

Commissioner White asked, in order to develop the White Oaks and/or Crenshaw water supplies, if the water would be transported to the Ruidoso area.

Mr. Eggleston responded that they would probably use a piping system to the Village.

Commissioner White asked what the future is of Capitan's water supply and all the area between Ruidoso and Capitan?

Mr. Eggleston responded that it was his understanding that Capitan has some very good wells and they are not concerned at the present time.

Chairman Dunlap asked that if it was a fact that the Bonito Lake pipeline that goes to the Tularosa Basin goes right by the Crenshaw supply?

Mr. Eggleston responded that it does.

Chairman Dunlap asked if it was possible, if you get the Crenshaw rights, to put that water into the pipeline to go on to Tularosa and to take your water instead of their water out of Bonito?

Mr. Eggleston responded that that would be the least expensive way to do it because the pipeline is only 3 miles from the Crenshaw supply. If they could work out a deal with Alamogordo, it would be much cheaper to build 3 miles of pipeline rather than 30 miles.

Chairman Dunlap asked if anybody from the state had looked at the Shomaker report.

Mr. Underwood responded that there are hearings scheduled at the Roswell District Office in April on the application, and all the reports would be reviewed to arrive at a determination.

Commissioner Sanchez commented that in regard to the memorial that is before the Commission, Senate Memorial 19, it requests that the ISC report its findings of the investigations that are mentioned in the memorial. This request for investigations was not supported with funding, so that may delay or cause a problem in getting it done. Commissioner Sanchez stated that he supported such an effort, but was concerned about how it would be done. He also said that perhaps they should approach the Water Trust Board for funding to accomplish this work.

Mr. Eggleston stated that they had not talked with the Water Trust Board as yet. He said that their interest was in getting the Commission's interest in the project to approach all people necessary in the process to get the funding in place to accomplish the project.

Chairman Dunlap stated that if the project is of benefit to the Pecos River, then funds would probably be available.

Commissioner White moved to direct the Director to prepare a resolution in support of the project to be accepted by the Commission at the next meeting, Commissioner Stafford seconded, to approve the motion. The motion carried unanimously.

The Commission resumed the executive session with a working lunch (**Agenda Item #8**).

A motion was made and seconded to return to open session. The motion carried unanimously. It was stated, for the record, that the only items discussed in closed session were those set out in the motion to go into closed session and no action was taken.

AGENDA ITEM #9 – PUBLIC COMMENT ON NAVAJO NATION WATER RIGHTS SETTLEMENT:

Chairman Dunlap welcomed the public present and invited those that wished to address the Commission to sign the sheet that was being distributed. The Chairman stated that there was an hour and one-half allocated for public comment and indicated that because of scheduled flights of the commissioners they would have to hold to that time. Chairman Dunlap introduced the Commissioners, the Director, and the Secretary and said that there would be a short presentation by John Whipple before the Commission begins public comment.

Mr. Whipple introduced John Utton who will participate in the presentation.

Mr. Whipple reported the following information regarding Commission and Commission Staff activities regarding the proposed San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement:

The Commission has been in continuing negotiations with the Navajo Nation regarding the proposed settlement of their claims to use of waters of the San Juan Basin in New Mexico. Public comment has been received on the proposed settlement that was distributed on December 5th. The comments received were considerable, and staff did not meet the very optimistic schedule that had been set to conclude negotiations by the first of March. There has been continuing dialogue with the Navajo Nation regarding the comments that have been received, staff is giving due consideration to all the comments, and that process is taking considerable time. A list of 29 substantive public concerns and issues derived from the comments has been prepared. There are additional concerns and issues that are considered technical in nature that have been raised as well, but the list of 29 issues provides a very good summary of what people are looking at. A list of water rights settlement parameters identifying the main issues and concerns that have been raised has also been prepared. The settlement consists of three main parts as far as water rights are concerned:

1. The adjudication of rights for the Hogback and Fruitland Irrigation Projects;
2. The rights for the Navajo Indian Irrigation Project as authorized; and,
3. Rights and funding for the Navajo-Gallup Water Supply Project.

With respect to the Fruitland Project, the December 5 draft settlement proposed a diversion rate of 100 cfs for the Project with an 1868 priority. The settlement proposed a diversion rate of 225 cfs for the Hogback Project, also with an 1868 priority. The San Juan County Agricultural Water Users provided a specific counter proposal that would call for a diversion of 83 cfs for the Fruitland Project with an 1868 priority and a total diversion of 225 cfs for the Hogback Project with a split priority (about half 1868 and half 1909). Negotiations with the Navajo Nation are continuing regarding these projects.

The proposed settlement recognizes the congressional authorization for the Navajo Indian Irrigation Project. The Project is authorized for irrigation of 110,630 acres of land. The Project is being built out presently at the rate of about 2,000 to 3,000 new acres per year, and is approximately 70% complete. The proposed settlement act would maintain growth of that project at about the same rate until fully completed.

The Navajo-Gallup Water Supply Project is a big impetus for arriving at a settlement as water and funding for the project will provide much needed domestic water supplies for the Navajo Nation in New Mexico.

There are other issues that have been raised in the context of the settlement, including jurisdiction issues over the administration of water rights. The jurisdiction issues involve jurisdiction over transfers of water rights and jurisdiction over administration of the Navajo Nation's diversions. Also, a principle that was considered in the negotiations was that the Navajo Nation would live within New Mexico's Upper Colorado River Basin Compact apportionment, which has been determined to be at least 669,000 acre-feet based on the yield available to the Upper Basin under the Colorado River Compact being at least 6.0 million acre-feet. If it is later determined that the yield available to the Upper Basin exceeds 6.0 million acre-feet, the proposed settlement provided that the Navajo Nation would receive 50% of any additional allocation that could be made. Many comments have been received on that as well.

In addition to comments on the quantities of the water rights for the Navajo Nation, many comments have been received expressing concerns about possible impacts on non-Navajo water users of the State Engineer's active water resources management and potential priority administration in the San Juan River Basin. The State Engineer is committed to administering water rights, not only in the San Juan River Basin but also throughout the state, and as we get closer to being in a position to do that, there are concerns about the effects of that administration in the Basin.

Another issue raised is the concern regarding the process for including public comments and concerns on the proposed settlement in the negotiations. Phone calls are still being received and discussions are continuing with people concerned about the settlement.

Mr. Whipple concluded by stating that we are still negotiating a settlement, and that the time spent in continuing negotiations is indicative of the fact that we are giving honest consideration to the comments that have been made. He continued that it was his opinion that revised settlement documents would not be completed for another 3 to 4 weeks at a minimum. He anticipates that when the revised documents are available they would be made available to the public, and staff would be happy to go through those with interested parties, indicate where changes have been made and explain the reasons for those changes. Subsequent to that, action by the Interstate Stream Commission to support the settlement would be sought.

Public Comment:

For the record, Mr. Steve Cone, representing "electors Concerned about Animas Water" delivered written comment regarding the Navajo Nation Water Rights Settlement, a letter addressed to Secretary John D'Antonio and Chairman Dunlap [see Attachment #3].

Melody Arrington

I have farmed on the La Plata River for 40 years and Mr. Dunlap is a neighbor of mine and can verify the facts that I will be talking about. My mother is 87 years old and in the last three years she has lost 90% of her farmland due to the drought and not having adequate irrigation water. I know of people with adjudicated water allotments that have not had a drop of irrigation water for 10 years from the La Plata River. Some of these years were not drought years. My questions are:

Some of the local irrigators have observed that the State of Colorado has not been delivering to New Mexico in the La Plata River the correct allotment of water. Is that true? Is this why we are having a water shortage on the La Plata River even in the good years? I would ask that the Commission take these facts into consideration.

In the Navajo Water Rights settlement discussions and meetings I have not heard mention of the La Plata water users. What is the reason for that?

How can State Engineer John D'Antonio state that there is enough water in the San Juan Basin to satisfy the Navajo water settlement when people on the La Plata have not had water in 10 years? We don't have the water that we need now.

I want the Navajos to have the water that they badly need. I lived myself, as a child, on the reservation and I have seen the Navajos come in their wagons to the Trading Post with their water barrels that they would haul their water in and later on in their trucks to haul the water. I believe the water that they are asking for is excessive and I ask the Interstate Stream Commission and our New Mexico State Engineer to stand up for the irrigators of the San Juan Basin by assisting to reach a reasonable agreement.

Zang Wood

Mr. Wood read a letter he had written to Dr. John Leeper of the Navajo Nation Department of Water Resources dated March 17, 2004 [**see Attachment #4**].

Mr. Wood concluded by saying that the public should have been in on the negotiations from the very beginning. The attorney for the Nation has been telling us what a great deal it is for us, for the basin, for the other people and entities in this basin. When the attorney starts telling me this is the best thing for me, and what a great deal it is, I always begin to worry. I hope that this settlement is not final yet, that my concerns and the concerns of rest of the citizens of this county, this portion of the state, would be looked at and listened to and I hope that they would be incorporated in the final settlement. Personally since having lived here since 1943, I have serious doubts that there will be

enough water in that river to supply everything under the existing agreement if it goes through.

Gary Risley

Mr. Risley introduced himself as an attorney representing the Bloomfield Irrigation District and the North Star Water Users Association. We had previously submitted a two page summary of comments and I am sure you have had the opportunity to educate yourself on a lot of those comments, so I won't repeat all of those. There are one or two points that I would like to emphasize that are of high concern to my two clients and I suspect other non-Navajo users or holders of water rights. The main criticism I have of the initial draft is that it really did not do anything to protect the non-Navajo users; zero, nothing. I am disappointed and I think that is what this Commission is for and I certainly think that is what the State Engineer's exists for. The waters of New Mexico belong to the public, not to the state, but to the public as it's citizens and those interests need to be protected and the agency is there to protect those interests to a great extent.

There are several points I have in my comments, but the one I really want to emphasize to you is that the settlement really needs to be a settlement of the issues because there is no mutuality that I see in the initial draft. The hard part about talking about a draft is four months old and the state has probably adopted some revisions that I guess in the next month or so we will have another draft. The problem I have with that is that, I think you all know, this adjudication has kind of gotten fired up and we have had several hearings on it. The thing about any litigation is that everybody has got a sword. You know they have it pointed at each other and the risk of litigation is if you win you get cut up a little bit and there are consequences to that litigation. If this Navajo water settlement is approved as it was originally drafted, and there is no protection in it for the non-Navajo users with regard to their previously adjudicated rights, it removes the sword from those users but you have put the sword in the hands of the Navajo Nation to attack those rights because they were not a party to the original adjudication. The main adjudication was the Echo Ditch Decree. The findings were made around 1938 and were probably entered into in 1948. But that did not include the Indian tribes because at that time state courts did not have jurisdiction over those entities. So, in theory, since there were not parties to that litigation, they have a right to look behind that Echo Ditch Decree adjudication and attack every individual right here or seek to make them prove up those rights. I think you can recognize there is a little bit of difficulty for these individuals that are involved in that while in 1928 or 1930 when this litigation started, some with rights back to 1878, now you are over 100 years removed and proving the water rights can be a very difficult task. I believe the critical aspect that any settlement has in it a provision that the Navajo Nation recognizes the rights that were adjudicated under the Echo Ditch Decree. They would agree not to attack any previously decreed rights except for forfeiture or abandonment subsequent to 1948. But they can not look behind the Echo Ditch Decree, there

has got to be some mutuality here so that all will need to put down there swords, so no one can attack those rights. I think you all recognize that this is a political problem and that is not contained in the draft. If that does not change there will be a massive phone and letter writing effort to the congressional delegation by the non-Navajo water users.

Mr. Risley concluded that he did not like to just discuss this issue, not to minimize the others, but to him that is a do or die issue for the non-Navajo users, it affects the cities here.

Questions from the Commission

Commissioner Sanchez stated that Mr. Risley had mentioned the concern of recognizing of Echo Ditch Decree and the potential for that to be attacked. Can you elaborate more on what you mean by it could be attacked?

Mr. Risley responded that to be bound by a lawsuit you have to be a party to that lawsuit as a general rule. Since the early 20's and 30's courts of the state of New Mexico did not have jurisdiction to bring the Navajo Nation into state court or the United States government into the state court and they are technically not bound by the Echo Ditch Decree. So they could show up and they could basically challenge everybody with an Echo Ditch water right to say prove it and that may be an oversimplified version but that is the basics of it. The purpose, we think, of the Navajo Nation water settlement is to remove this tremendous overhang that has been over water rights in the San Juan Basin for a long time. I have feelings about how much water is being given, you have heard a lot about that already but this is a settlement that we believe if we can remove that cloud I think it would go a lot of the way in removing the uncertainty. Part of the adjudication is to give people certainty as to their ownership of water. It also has had a very negative impact on the market value of water rights, for example water rights here trade for \$1,500 to \$2,000 and in Colorado it trades for \$12,000 to \$14,000. For cities in the basin that are expanding and want to acquire additional water rights, but they can not have any confidence that they would have clear title to those water rights, that the United States government may attack those rights. Then they would have the burden in terms of cost of defending those rights to prove that the adjudication resulting from the Echo Ditch Decree is valid. The Navajo Nation as part of a settlement should agree not to challenge the rights given by the Echo Ditch Decree.

Commissioner Sanchez stated that he was clear about the basis of the Echo Ditch Decree, but wondered if there was any other law that would supersede the Echo Ditch Decree that would give deference to the tribes' ability to exert any type of claim that would not effectively apply that Echo Ditch Decree as you described in terms of what the basis is that the tribes water rights claims in terms of that being substantiated.

Mr. Risley responded that the general basis of Indian rights has been what is now known as the old Supreme Court case, the Winters Doctrine. The question is what is the scope being used. The historical standard being practically irrigable acreage (PIA) and there has been no substantiation of PIA or any other use. I am not saying that to get a settlement we absolutely have to have that since it raises questions in peoples mind as to what is actually adjudicated. But it is settlement. It is a negotiation and what in theory is happening here is we have one pie. A part of that pie is 15% of the water that is previously adjudicated in the Echo Ditch Decree, the Navajo Nation is the big chunk of the water that is allocated in the state of New Mexico under the compacts and then what is left is parsed out among other folks. I think the effects of the Echo Ditch Decree on the Navajo Nation are nominal. The earliest rights under the decree are 1878 rights and they run all the way up into 1948. Navajo Nation rights as proposed under the plan are 1868 rights subordinated to 1955, that is, water being stored and to be used for that benefit. I cannot see impairment to the Navajo Nation because of the Echo Ditch Decree because of the nature of the claims that are being made and the State Engineer has assured us that there is adequate for those proposals. So with that in mind, I do not think it is impairment and the concern I have, again, is that there is no trust. I do not question the integrity of anybody involved but all it takes is one change of administration and all of a sudden the rules have changed. So this needs to be clearly delineated in the Navajo Nation Water Rights Settlement.

Commission Sanchez stated that the way this settlement has been proposed to this point, what part of it is attacking the rights that are attached to the Echo Ditch Decree?

Mr. Risley responded that the draft document does not attack the Echo Ditch Decree, but it does not prevent the Navajo Nation from going against those that have rights granted under the decree. If the Echo Ditch Decree is approved by the court, as a partial adjudication of the Navajo's rights, the non-Indian leaders will no longer have the ability to challenge the Navajo Nation appropriations that have been granted under that decree. So they have no sword to fight back. The primary parties here are the water users, and that includes the Navajo Nation. You cannot have a settlement without mutuality.

Commissioner Sanchez stated that while not speaking on behalf of the Navajo Nation, he believed they have no intent to attack the Echo Ditch Decree.

Mr. Risley stated that the draft settlement is very much an engineer's document. There are political issues that I believe are not clearly delineated. I think both parties understand what is being said. It may be implied, it may be understood, but it is not expressed and I think that is the critical point.

Jack Scott

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To reiterate what I said at the Bloomfield meeting, notice for this meeting was in Sunday's paper, but since it is being held during the workday a lot of people do not have the opportunity to attend. I am sure though there will be other opportunities when this is in a more final state. The process has been very bad. It is a bad document in my opinion. We told that when it was first presented to us that we would have a certain length of time to comment on it. We have had no input into this document. We are told now that there have been several changes made in it and this is several months later. That comments are still being accepted whereas in the first meeting we were told that that is the deadline, comments would not be taken after that. The document itself, in the settlement, is based on depletion and consumption, two quantities that realistically cannot be determined. I mean it may take, and no one knows, it may take 15 years for some of this water on the Navajo Indian Irrigation Project to get back to the river. Already we are finding in the river system here that water that is coming in is increasing selenium levels, a lot of mineralization is occurring. By time you get down to Shiprock when water is low, I would not drink that water even if it were treated with very sophisticated systems. I would require reverse osmosis before I would drink it. Gallup seems to be getting the best deal out of everything here. The way I read the thing, and I may have read it wrong, the cost for them to get their water is around 80 million dollars but there is a provision in there that if they can not pay, they have to pay only what they have the ability to pay. They have already been back to Washington telling the congressmen back there that they cannot afford the 20 million dollars laid out in the document that they would be able to repay. If you read the Gallup newspaper recently just their system alone hasn't been repaired for years and years. They are talking about at least doubling their water rates just to take care of their system. They have no way to pay for this. If they are getting water out of it, and we up here as far as communities, as far as for the farming and ranching community and as far as the cities aren't getting any dollar value. I am not saying that I want to be greedy, but if they are going to get this, lets get in here that the federal government is going to pick up the cost of the Animas-La Plata project for us up here. I mean part of the Navajo settlement is involved with the Animas-La Plata. It's not mentioned in the document, but the Shiprock pipeline is supplying water through the Farmington system to Shiprock as a part of the Animas-La Plata. The last 5 miles of the pipeline is going to be a part of the Animas-La Plata cost and not part of the Navajo settlement. As you are well aware, the Animas-La Plata costs have gone up tremendously since construction started last year. It was announced last week in these meetings that Gallup-Navajo pipeline is probably going to be 150 million more than what has been presented originally in the first draft. It is my sense that this will be a 2 billion dollar settlement before it is over. The ditches at Shiprock, the Navajo ditches have multi-millions of dollars in for operating and repair. There is nothing in there to help the non-Indian ditches up here. Approximately 10 or 15 years ago, on the Animas-La Plata, we realized we would have problems on the Animas with water delivery. At the time the soil and conservation service and extension service got together and it was going to take about 300 million dollars to repair these ditches and bring them up into moderate

standard for modern day service of ditches. If we are limited and a lot of this raises many questions, we do not know because we don't have any information as to what is going happen under this settlement. This settlement is unclear. We cannot take this settlement and internalize what is going to happen on our ditches. If everyone is going to get their hand out, I think that the cities and irrigators up here, the non-Indian irrigators, should also have a part in this. We should not have to pick up costs for Animas-La Plata that are way beyond what we agreed to and hoped for. Colorado water use; Colorado continues to adjudicate on all the rivers that come into New Mexico. Every year water rights, recently on the Animas, there has been an application for 30 cfs to supply 5,000 homes in a rural water system up there. The City of Durango has just approved a major annexation and they are talking 4,000 homes. Purgatory, Durango, Mountain Resort, the ski area up there is using very junior water right to make snow. They recently have gotten approval for several hundred houses and condo units. This is all new water. In the past 3 or 4 years I have supplied the State Engineer's Office with a printout from Durango and for Colorado, the state division office, of these adjudications going on. Up there they have everything, they have computers that produce a multi-page document and it delineates everything. They also have conditional water rights in Colorado that we don't have that can date back to before the turn of the century. The State Engineer and the Interstate Stream Commission needs to approach the State of Colorado and stop them from using and taking water that historically we have used down here and have a right to use. Before you vote on this final document I would hope that you all read and understand that document as it is finally proposed and that you do have an opportunity to look through some of the statements that have been presented up here. We have been told so many conflicting statements that have not come through in this process that started just recently. We have been locked out of the total negotiating process. I do not see trust here. The Bloomfield meeting was really the first that the Navajos set up and the first dialogue that has gone back and forth between the parties. I think we need a lot of dialogue between now and the final settlement.

Laverna Ahkeah

The Navajo's have been mostly underdogs for all these years and now they are trying to get some water and especially the Navajo-Gallup Project and they are getting a lot of opposition; especially against the project. My father-in-law came here when he was little with the Navajo tribe. That's when he started this Navajo dam and what you see here. He included the Navajo-Gallup Project at that time when he was on the Navajo Council back in the 1930's and 1940's, to receive the water because he envisioned the Navajos getting into agriculture. They would have farms and ranches down there. All the way down to Gallup and around Gallup. So this was his basic agenda and at this time, the present time, my whole outlook on this whole situation, is the Navajo have never really benefited from the State of New Mexico. We have put in, the Navajo, their share of taxes, their share to the economy, but as far as getting revenue back from Santa Fe,

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there has been zero. Because I remember one of my family members from Window Rock when he went to Aztec and asked for help from the County, he was going for help, and they were refusing because they said the man was getting all the federal appropriations from Washington, DC., so that he would be double dipping. So he did not get anything out of the County. My husband also went to the County for help, but it has just been very hard, just like pulling teeth. They are saying that we are double dipping. The federal appropriation for the Navajos is gone before it gets down to our level, so actually we need to get some benefits from the State of New Mexico. I think this is the time that the Navajo have the upper hand and like I said for many years we had benefits from the State of New Mexico or other states, California and Arizona, we have been getting benefits for the San Juan River. I think now is the time the Navajo should take their stand.

Mike Sullivan

He introduced himself as representing the San Juan County Agricultural Water Users Association. I am sure most of you have read the comments that were submitted by the agricultural water users. But just in case, for those of you who might not be familiar with the organization, I will give you a brief on that before we go any further. The San Juan Agriculture Water Users Association represents 36 of the 38 irrigation ditches in the San Juan Basin. The members of our association have water rights from the Echo Ditch Decree and appropriations for approximately 35,000 acres of irrigated land with a farm delivery of over 110,000 acre-feet of water. We are also entitled to divert approximately 1,000 cfs from the rivers of the Basin. Our members consist of about 15,000 irrigators and their families. We represent the second largest stakeholder in the basin after the Navajo Nation.

We believe there are several parts of the settlement that embody harmful effects for our association and residents of the Basin in general. We also believe that it would be in the best interest of our constituents to delay the implementation of the proposed settlement so that all stakeholders may have time to analyze the effects on existing water rights.

In the document that we submitted with our comments to the State Engineer on January 15th we had approximately 8 issues and I won't go through all those issues now. But the one thing that has to happen is that we all have to sit down at the table and it has to work for everybody. This is such a massive settlement and it is going to be a onetime settlement and when we take this thing to the table and it goes to congress it needs to be something that we can all live with. It can't be just a settlement that benefits one side or benefits the other side. We had a gentleman in Bloomfield the other night that stood up, and he was a Navajo, and because of what we feel like with some of these concerns, we feel like the ditches in the Basin could very well be cut off because of some of these issues, and he asked a very pertinent question, he said I am a Navajo too, how

does this benefit me? I am on the same irrigation ditch that the Anglo people are on, how does that benefit me? I thought it was a real good question because he stands to lose too. One of our concerns that we expressed previously was that diversions to Navajo Nation lands and the use of Navajo Nation water off Navajo Nation lands remain under the control and jurisdiction of the State Engineer's Office. We know that there are some concerns with that, but we know that that is being addressed. Another concern expressed is that we question the fairness of the settlement concerning the calculation of the depletions. You know under the Echo Ditch Decree we are looking at a 2.0 acre-feet per acres on our depletions maybe even less than that to 1.9. And yet they use 2.4 acre-feet per acre in the settlement. So we are saying what is good for one side of the fence should be good for the other side of the fence. We particularly have concerns about the amount of water to be diverted by the Fruitland-Cambridge and Hogback-Cudei ditches. Under the Echo Ditch Decree we believe it is fair and equitable to apply one cfs per 40 acres for beneficial use of water, we know for a fact that under the Hogback-Cudei right now, they are irrigating about 4,000 acres, they are asking for 8,000 acre-feet of water. I realize that this is a negotiating process, and what we are told time and time again is that it doesn't have to meet state law criteria because it is a settlement of reserved rights. Well, that may be fine, but if they take that entitlement of 325 cfs off of those three ditches, that could eventually shut ditches off upstream. Under the Echo Ditch Decree we are being held to the one cfs per 40 acres. If you are not using it, you are going to lose it. That is an understanding we have. Yet we are looking at this issue down here, and they are irrigating 4,000 acres, they are giving them water for 8,000 acres, and these all have an 1868 right. We feel like there needs to be some concessions on those issues in particular. Much has been said that this settlement provides 60% of the water available in the San Juan River Basin to the Navajo Nation; however, little has been said of the \$840,000 million plus that this settlement provides for infrastructure, let alone the \$25,000,000 in funding from the State of New Mexico. The stakeholders in the Basin have been told on numerous times that there will be an opportunity to comment during the inter se process of the adjudication. Well let me tell you, that is ineffective, non-economical, won't work way for us in the Basin. If it gets to that point from here, once it is approved the state signs it, it will go to congress, and once it comes back it will have to go to the state legislature to authorize the \$25 million. We were involved in the Jicarilla water rights settlement and it was the same process. When it came back and we were allowed to comment during the inter se, there were some changes that were made but it was very expensive. It was a legal process, you file the briefs, they file the motions and the judge presiding makes his rulings. Basically it was told to us that because it had been to congress it would not be re-visited and changed. There were a lot of things that they would not take a second look at. My contention is we have to make it right up front. It has to satisfy the stakeholders of the Basin, not just one side but all parties that are stakeholders. Sometime it reminds me of the statement that Thomas Jefferson once said, "that government that is big enough to provide everything for you is big enough to take it all away." So I think that we have to stand up for our rights; I understand the

needs for the Navajo Nation to have the water that they are entitled to. But really in this negotiated settlement, all that is here says is what their entitlements are. This is a negotiation process and we have heard time and time again from the Navajos is that they are entitled to 100% of the river. They have an inherent right to that. Well, I don't buy that. I do not think there are a lot of people in this community that buy that. We know that they have an entitlement; we know that the Gallup pipeline is an issue that needs to be taken care of for domestic uses for those people. We know that these issues are all being discussed, but this is the first time that we have appeared before you as a Commission and we appreciate that. I would like to say that I concur with the comments of Mr. Risley and Mr. Scott and most of the folks that have made comments before.

Jay Burnham

One thing I wanted to emphasize that the City of Farmington recognizes that, and that's whom I am representing, I am the City Attorney, the settlement of the rights of the Navajo Nation is the most important thing we could be doing right now. We are working on what is the most important thing that needs to be done at this time for this area of the state. We also recognize that it is absolutely necessary for the Navajo Nation to have water that is necessary for it to develop and to continue to grow and prosper economically. So this is the most important thing that we could be doing. The City of Farmington has submitted a number of written comments and we have received some responses to the comments from your staff. I wanted to tell you Commissioners how much we appreciate Mr. Dunlap, the Chairman of your Commission, and John Whipple and others on the staff that has spent their time, a lot of their time, here in San Juan County over the last few months trying to communicate with us in regard to the settlement. We really appreciate that. The City of Farmington has not taken an official position in regard to the settlement we have reserved that for a later date. We have discussed, we are trying to understand it, and we are receiving input on it. The City of Farmington will, at the appropriate time, take an official position either endorsing or opposing this settlement. But that day has not yet happened. We appreciate all the additional time that has been taken since the original comment date was cut off on January 15th. As we open discussion in these meetings and in the other meetings, we totally appreciate it. I just wanted to touch on a half of dozen of the major issues that the City has in regard to this. I will just tick them off we do not have time to cover them in detail. But those issues are:

1. The appropriate number of acre-feet of diversion and depletion for the Navajo Indian Irrigation Project rights. Everyone knows that due to the modern technology that the project does not require the full 508,000 acre-feet per year to irrigate the lands even when they are fully developed because drip irrigation and sprinkler irrigation is more efficient than the flood irrigation that the project was originally envisioned to use.

2. The Navajo-Gallup Project will take water out of the Basin that will not be returned to the Basin, there is no flow back into the river from water that is taken out too far away from the actual river drainage. That is an issue.
3. The appropriate priority dates for all of the water allocated to the Navajos is an issue, and one issue I am particularly aware of is that there are portions of the Navajo Nation that were not included in the boundaries of the reservation as it was established in 1868 and that there is a question as to whether some of the project rights should be outside or other dates rather than 1868 date for priority.
4. The issue raised so well by Mr. Risley, the City of Farmington relies on the rights that were adjudicated to it and to its predecessors and interests in other rights that we have acquired since. All dates from the 1948 decree, the Echo Ditch Decree and the validity of those rights is paramount to the City of Farmington. If this settlement could include a promise on the part of the Navajo Nation not to attack those rights in the adjudication, that would go a long ways towards satisfying the City of Farmington.
5. The depletion schedule as it was attached is not a part of the Navajo water rights settlement documents but attached for information purposes. That depletion schedule basically shows that between the rights allocated to the Navajo Nation in the settlement and present uses the water is all gone. The only growth for municipal and industrial use in the future in that depletion schedule is in the Animas-La Plata Project and that concerns the City of Farmington that there is not any additional municipal and industrial water in the future for San Juan County and the City of Farmington.
6. It is my personal opinion that the documents as they are now presented do not adequately address the issue of how the shared responsibility to provide water for the endangered fish, the Colorado pikeminnow and the razorback sucker. I think it is clear to everybody up here that we are going to have to supply, we are going to have to leave water in the river for the benefit of these fish from time to time and how that water that is left in the river and not used is allocated between Navajo and non-Navajo users I think is an issue that needs to be addressed.

Mr. Burnham concluded by thanking the Commission for the opportunity to talk to them and that he hoped there will be a continuing dialogue in the future.

Questions from the Commissioners

Commissioner Sanchez stated that since the City of Farmington hasn't made a decision whether it will endorse, up or down, the final settlement, gives me hope that there are parts of the settlement that you are in favor of because what has been said is pretty much against the settlement, different parts of it that may be inseparable from the total agreement. Given that the City of Farmington is reserving judgment, are there parts of it that you are in favor of?

Mr. Burnham responded that he didn't think that he would put it that way. I would put it that the City is keeping an open mind as to the settlement, because we know it is so important and we want it to work. There are some concerns, but if those concerns could be addressed it is very possible we could support it.

Commissioner Sanchez stated the other question he had was about the municipal and industrial water supply availability for the City. I had to go back and look at the regional water plan that was presented at our last meeting or the one before and the projections that you are looking at as far as future growth in the City and you may not be able to answer this question, but does this future expectation for population growth include the influx of Navajos into the City?

Mr. Burnham stated that he could not address that specifically. We do know there is, at least I have been shown some figures, that there are a number of Navajos moving from the reservation into our urban areas and that includes Farmington. I think that has to be taken into account the settlement has to benefit the reservation Navajos and the non-reservation Navajos. That is important, but with respect to the municipal and industrial water, it is not just the City of Farmington because we are actually in pretty good shape compared to some other areas, but the County as a whole, there has to be some future municipal and industrial use in the County.

Chairman Dunlap recognized the entrance into the meeting of the Vice President of the Navajo Nation, Frank Dayish.

Randy Kirkpatrick

Without repeating what has been previously said, I would like to mention 10 or 11 specific points. The San Juan Water Commission like the City of Farmington does recognize the need to resolve the settlement as quickly and as efficiently as possible. Earlier John Whipple correctly stated there would be another draft of the proposed settlement that we haven't seen. That really calls for additional time to look at it. The Water Commission staff has put together a draft paper listing the concerns of the commission. The Commission will be considering these at the next San Juan Water Commission meeting. Commissioner Sanchez mentioned regional water planning for the State Water Plan. During that there was a requirement inserted there to be a complete public process to comply with

requirements for transparency and for full public participation as insisted by the Interstate Stream Commission and the State Engineer's Office in the State Water Plan for all water rights settlements. We are very concerned that you need to have that and obviously with the comments I have heard today and heard at other meetings, I do not believe this community feels that has been met at this time so we do need to consider that before we go to a final version of the settlement. A moment ago, I believe I heard Mike Sullivan say correctly, that in the Jicarilla our experience was that there was little opportunity to modify the settlement once it had been passed by congress. In my report, I did reference that quite a bit. So we are a little concerned that this is moving too quickly before the community is comfortable with the settlement. The Water Commission has worked long and hard with the people in Colorado on settlement issues and do recognize that this is necessary to get the majority of the people at least understanding what is going on if not in full concurrence with what is happening.

Some of the specific issues that we are concerned with is the early priority date for the Navajo-Gallup Water Supply Project, we do not think it is appropriate. That project is not permitted and I have identified the permits that are supposedly covering it at this time. That permitted priority and allocation of that combined permit needs to be done. That permit is already serving in one of our projects including NIIP, San Juan-Chama, and the Jicarilla settlement and we need to look at those priority dates and how quantities of water go out through that combined permit.

The two diversion points for the Navajo-Gallup pipeline concern the San Juan Water Commission because of location. Those points of water were taken at the upper reach of the river they would make it difficult for diversions to occur downstream on the San Juan by irrigators and others. If they are split and taken out below the irrigation process in our urban community that would relieve some of that difficulty.

The 10-year averaging is contrary to state law and could disrupt the users in the San Juan Basin. The San Juan Water Commission is extremely concerned about that issue.

It was interesting to me listening to the conversation between Jay Burnham and Commissioner Sanchez about serving the needs of Navajo population off of the reservation in communities like Farmington and others in the San Juan Basin. The largest growth in the 2000 census was the increase in the Navajo population outside the reservation. It was not the non-Indian population. We are projecting by the year 2040 they will be the majority population in San Juan County outside the reservation and there is a need to serve them. We are concerned about where that water supply will come from.

The transfers off the reservation must comply with New Mexico state law and be under the administration of the State Engineer. The Colorado Ute Indian

Settlement in 1988 does that clearly, much more clearly than the language that is in the current legislation.

The settlement must be final and the possibility of future allocation of surface water and groundwater undermines that finality. So we are very concerned about that issue as well as the possibility that we do move forward in this process to try and resolve and meet the criteria of this settlement. If we find ourselves in 20 years unable to do so then we have to go back to the drawing table. The parallel is certainly the Animas-La Plata Project and the Colorado Ute Settlement. In 1988 they thought that 2005 was long enough to build the reservoir, now it looks to me to be 2012 or 2014 before it is actually fully operational.

Regulatory shortages need to be shared with the Navajos. Their ability to have their homeland is just like the homeland for everyone else. Those regulatory shortages have to be allocated across the board based upon your share of the water supply.

The ISC must continue to support the full funding for the Animas-La Plata Project even with competition from the Navajo settlement. If you look at the settlement dates, and when things have to be done with the Navajo Nation settlement, they do conflict with federal funding to complete the Animas-La Plata Project by 2010-2012.

Bob Oxford

I retired from the local office of the State Engineer after 12 years four years ago and I have read the draft. I believe there isn't sufficient language to protect both the Indian and non-Indian users. Once this settlement occurs the river will have to be administered and if the State Engineer is not the one to decide who is to be cut off, who will it be? The State Engineer must verify that the Navajos have the demand of so much that is not being met in order to cut another ditch off. I do not see how it will work without the State Engineer verifying that demands of Navajo diversions are not sufficient in the river to cut off a non-Indian user.

The other problem I have with the settlement is the 10-year averaging. This is something new, historically I have never heard of this. When you have a floating amount that you might be able to take one year; and a larger amount the next year the person that doesn't have that right would not know what harm that might cause him. For that reason I believe those 10-year averages should be eliminated.

These and other changes must be worked out before there can be community support for the settlement.

Carroll Crawford

I am a local member of the Bloomfield Irrigation District. First of all we all want to have a fair settlement. Some of the things that have been mentioned today would help us achieve that. I want to refer you back to our two Attorney General's opinions, Mr. Frank Clancy in April 1910 and Mr. Joe Martinez in July of 1952 in the Manual of Rules and Regulations for the State of New Mexico Engineer. In that there is the recommendation "whereas all inflow water entering New Mexico San Juan Basin will be the property of New Mexico and the State Engineer has a duty, the right and the power to make the rules and regulations necessary to administer the duties upon his office which may affect the Bureau of Reclamation, the Department of the United States, subject to requirement provided by such reasonable rules and regulations promulgated by the State Engineer to ensure a priori water rights for the adjudication of appropriated water are not impaired to prevent waste and damage. The State Engineer has the right and the duty of supervision and enforcement of all waters according to the licenses issued by his office and to the adjudication of the courts. I continue to recommend that the State Engineer assume control of all or any part of such interstate streams and their diversions, releases and distribution of water of the same in the public interest. The State Engineer cannot be ignored in his requirements as to the control of streams and waters of New Mexico.

I continue to encourage Mr. D'Antonio to wear his silver spurs and do that for us and that needs to be spelled out in the settlement agreement. The Echo Ditch Decree I want to affirm what Mr. Risley, Mr. Scott and Mr. Sullivan have said about the Echo Ditch Decree being recognized in that agreement.

To be a fair settlement we need fair rates for all and I again second the point that whereas non-Navajo ditches currently get one cfs per 40 acres that should be applied to all irrigation diversion points, and diversions should be the measure of water apportioned rather than any other measures because this is the only one that you can really measure with any accuracy. I want to point out that subordinated dates in the agreement need to be spelled out in case there ever is a priority call there shouldn't be a misunderstanding of where the priority dates fall.

I agree with Mr. Oxford's comment on the 10-year averaging, that's good for planning but absolutely worthless for operational purposes on a year-to-year basis.

Congress, when they put in the Navajo Dam ensured that there would be no impairment of priority water rights and as to the dam itself I understand there is an excess of some 400,000 acre-feet and the direct flow users which included two Navajo ditches, Hogback and Cudei, and the other direct flow users should

be considered for storage rights for the shortage periods that do occur in the latter part of the summer.

Frank Dayish

Thank you for allowing me some time Mr. Chairman and the distinguished body of the Interstate Stream Commission. I am extremely honored to sit before you today and express some of my thoughts regarding the proposed water settlement. Earlier, when I came in here there was a thought brought up that Navajos were moving to Farmington. Actually it is the reverse. We will welcome all non-Natives to the suburbs of our Nation and Farmington as well, so we will continue to do that as we grow down the road and I would like to continue to prepare and plan for the growth of both our Nation and the suburbs surrounding our Nation. The reason that I say that is the quad cities Aztec, Bloomfield, Farmington and Shiprock, the mayors and I have worked very closely hand in hand and we have talked about a lot of the issues that I am hearing today and I just wanted this distinguished body to know that. Also, I heard everyone welcoming you and I will do the same. John D'Antonio could be a resident of Farmington he has been here so many times working on this particular issue. I am excited to be here. Let me present a few things.

One of them is that we would like to maintain a good faith relationship with San Juan County. All the water users and associations that are associated with that and we want to continue to work hand in hand in that regard.

The other thing is that we have worked very hard on this settlement for over 15 years and I can remember talk about water settlement, water rights when I was in elementary school in Shiprock. So it has been an ongoing issue and I hear people talking about how it is short fused, but this has been an ongoing issue and we have been talking about this for a long time and so with that perspective for all the work we have put into it we would like to see a really good conclusion to it. When I say that I would like to continue to work as a good neighbor to neighbor partnership again with the quad cities and I would like to include Gallup in there too because of the Gallup pipeline.

A few weeks ago the Navajo Nation heard many of the concerns of non-Natives. So last week we had a hearing, we wanted to ensure that the Navajo Nation heard non-Natives issues and concerns as well so we set up a meeting by the Resources Committee and they are addressing those issues and bringing them in front of this Commission to ensure that we address those issues appropriately.

We are working adamantly with the State of New Mexico as I stated earlier to ensure many of the water questions can be answered like the ones coming up today and we would like to see that incorporated into settlement.

Last month we met with the San Juan County representatives and senators when they were in session at the state capitol. We met with Senator Kysar, Senator Sharer was there and Senator Cheney was there and they are all representatives from here and the memorial that they presented and passed we worked very hard on and I was really happy to see that come together as well as the efforts of our Navajo senators as well Senator Pinto, Senator Tsosie, the list goes on. Also the prior State Engineer Tom Turney. I was really happy to hear from everybody and how they have supported the ongoing effort that we are talking about. We have made every effort with the local media to ensure that the City of Farmington and the surrounding communities receive all ongoing water settlement meetings, the schedules so they can attend and hear what is going on. We will continue to do that as well.

I just wanted to mention those viewpoints at the present time. We are extremely excited about continuing our good working relationship with the state, the Commission and I will pledge to you that we will continue to receive non-Natives to the suburbs of our Nation and as we go into the future we want to ensure that included in the plan as well.

Again, I am extremely delighted to be here and thank you for listening to me. Also when I came in I appreciate your acknowledgement of my presence Mr. Chairman. Thank you very, very much.

Questions from the Commissioners

Commissioner Sanchez stated he wanted to thank Vice President Dayish for his comments. He reflected on something that was a concern of mine and the reason I pointed out the issue of Navajos moving to non-Indian areas off the reservation and the concern to meet future water use based on population changes that potentially there would be a majority of Navajos living off the reservation. I am not really sure that it makes a difference whether the Navajos living off the reservation are a majority because either way it is a population that will be living in that jurisdiction and that water supply will be still met. I am hoping that is what I am hearing and not a distinction between Navajos and non-Navajos living in those areas outside the reservation boundaries. Chairman Dunlap stated that he could ensure Commissioner Sanchez no distinction was intended.

Bernadette Tsosie

Good afternoon Commissioners. I just wanted to let you know that I work with the Navajo Nation Department of Water Resources and have been dealing with a lot of the chapters up and down the river. I wanted to give you a little bit of overview of what some of the Navajos are saying. You a lot of them support this settlement we want to be able to work with our neighbors. We did work with the shortage recommendations and that was a huge accomplishment in trying to work with our non-Indian counterparts so that we could ensure that the non-

Navajo farmers and Navajo farmers could have irrigation water during the shortage time. We are trying to work with them and this is just one example of that for this important settlement that is what we are trying to do.

Second, I know a lot of people or a lot of the non-Indians feel like that we are not going to comply with the state laws or whatever and there are a lot of Navajos that feel like that we should not have to report to the State Engineer's Office to be able to do just whatever we want to do to convey water to the systems. But this is what the negotiation process is about and there are going to be some people that are not going to agree with that and some people will. If one side agrees with it then it means it is a really good settlement for that side. Also, a lot of the Navajo farmers believe that the reason that they don't have the farm acreage that they can irrigate is because the system is unable to provide the water through the system. So they want to be able to have upgrades to their irrigation system and they want to be sure that they can get water to those areas that have been idle to increase the farm acreage in those areas. So we wanted to ensure that we can continue our way of life with farming in the San Juan valley.

Some people think that the settlement numbers for the cost is too low. They want to see more numbers, but we also have to realize too that how are we going to get the water through the system. So these are just some of the concerns where people are, some of the non-Navajo and Navajo they also want to ensure that we have a reliable drinking water source for municipal uses as well. The Navajo-Gallup pipeline allows us to be able to use that water to ensure drinking water for our people who have never had reliable drinking water. A lot of our people who live on the eastern part of the reservation or along the Navajo-Gallup pipeline route between Farmington and Gallup don't have drinking water. The systems will be able to provide a municipal source so that can have clean drinking water to ensure that they are able to have a shortage distance to get potable water. We are not saying that every home is going to have running water but it is going to be a shorter distance and a more reliable source so that they can have that drinking water source.

So these are just some of the concerns that we have that I carry out to the public at some of the public meetings that I have been to. I just wanted to let you know as well as the public they have concerns as well as we do and we just have to be able to work together to ensure both sides are equally heard.

John Leeper

I am a civil engineer with the Navajo Department of Water Resources. I do not get paid to talk so you know I am not going to say much. I do want to say that I think the settlement as was drafted is good for the Navajo Nation, it is good for the basin, and it is good for the state. It includes the major components of the Navajo Indian Irrigation Project, the Navajo-Gallup Water Supply Project that has a lot of water supply and distribution benefit to the whole corridor. It includes the

historic irrigation projects and the municipal water for the Shiprock area. All of these components were discussed at length in the regional planning process and lots of folks shared different opinions about all these projects. The settlement is intended to include protection of existing water uses. Now that said, the one thing I heard that I disagree with, because none of the comments we heard today are trivial, is about the level of trust. Bernadette, who spoke before me, alluded to the shortage-sharing situation. We have been through a couple of real rough years here, water supply years that could have ripped this community to shreds. The only reason we were able to survive those years, is because there is a level of trust here. Every single person that has brought concerns to this Commission is somebody we are all on a first name basis with. The reason it has taken so long to bring these settlement documents to this Commission and also to the Navajo Nation Council is because we are taking those comments seriously. They are not trivial and every one of those comments has two sides to it. This has not been an easy thing, this has been probably one of the most difficult things I have been associated with. By taking this extra time it is our goal to bring back to this Commission and to the Navajo Nation a settlement that this basin will support and I think every person in this room has to know that is the goal of the folks that are working on this day in and day out. The comments are not trivial, they are not being ignored and our goal is to bring a settlement that this basin is going to support.

Chairman Dunlap invited John Whipple to make some closing remarks:

Mr. Whipple stated that for several years now, the State Engineer has made public pronouncements in the San Juan Basin that the Navajo Nation water rights settlement would largely consist of three major components: adjudication and rehabilitation of the Fruitland and Hogback irrigation projects, the completion of the Navajo Indian Irrigation Project, and construction and operation of the Navajo-Gallup Water Supply Project. These remain the major components of the settlement as proposed on December 5th.

A large portion of the Navajo Nation's water rights under the proposed settlement is for the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project. Under the proposed settlement, reserved 1868 priorities for the two projects would be subordinated to a June 1955 priority date and serviced by the Secretary of the Interior under New Mexico State Engineer File No. 2849 for flow originating above Navajo Dam. Also, the Navajo-Gallup Water Supply Project will divert some water directly from Navajo Reservoir through the Navajo Indian Irrigation Project facilities and will divert some water from the San Juan River near Kirtland. A lot of the diversion demand for the Navajo-Gallup Project at the Kirtland diversion can be supplied under New Mexico State Engineer File No. 3215 for inflow below Navajo Dam with a 1968 priority date. So for inflow below Navajo Dam, the Navajo-Gallup Project cannot make a priority call against water users on the San Juan, Animas or La Plata Rivers that have a priority date senior to 1968.

There has been some discussion regarding future availability of water through the Navajo-Gallup Project to the Navajo communities versus the future availability of water for non-Navajo communities. The Navajo-Gallup Project is sized to supply an estimated demand by the year 2040, after which the Navajo Nation would have to transfer their irrigation water to municipal and domestic uses to supply demand over that amount. Similarly, the Animas- La Plata Project provides water to the non-Navajo communities to meet their projected water demands for another 20 years or so, after which irrigation rights would need to be transferred to municipal and domestic uses. The schedule of anticipated future depletions prepared by the Interstate Stream Commission includes both projects, but did not speculate as to rates of conversion of irrigation uses to municipal and industrial uses over the next 60 years.

With respect to the Hogback and Fruitland irrigation projects, there have been a lot of comments regarding consistency with the Echo Ditch Decree rights. The Echo Ditch Decree adjudicated farm duties to non-Indian ditches based on the consumptive irrigation requirements determined by the State Engineer's 1938 Hydrographic Survey. Because the Navajo Nation is the owner of all rights under the diversions for the two projects, the proposal was to adjudicate to the Nation a depletion that includes both the consumptive irrigation requirement and incidental depletions. This is consistent with the depletion rights adjudicated the Jicarilla Apache Nation. The non-Indian irrigation rights that are adjudicated for a farm include a farm duty based on the consumptive irrigation requirement, and the ditch is provided carriage water sufficient to deliver water to supply the rights of the farmers.

Nevertheless, the Navajo Nation and the State of New Mexico are discussing ways to maintain consistency between irrigation rights of the Navajo Nation and other ditches in the Basin. For example, discussions continue regarding increasing the annual diversions for the Hogback and Fruitland projects with the reserved 1868 priority dates to reflect the annual acre-foot per acre diversion volumes determined by the 1938 Hydrographic Survey. The Navajo Nation and the State also are discussing the one cfs per 40 acres diversion rate standard of the Echo Ditch Decree. In this particular instance, the real discrepancy between the parties is over the proposed maximum diversion rate of 100 cfs for the Fruitland Project; however, the Navajo Nation has concerns about being able to run water all the way down the ditch with as little as 83 cfs. Certainly, one of the issues that will come up in the adjudication process is what adjustments should be made to the total cfs diversion right on a non-Indian ditch if a substantial portion of the irrigated acreage on the ditch is found by the adjudication to be forfeited or abandoned and if one cfs per 40 acres is not sufficient under current physical ditch conditions to carry water to all remaining users on the ditch. These are some of the issues about consistency that we are discussing.

The State and the Navajo Nation also are discussing possible compromises on jurisdictional issues: some comments received argue that the State Engineer should have jurisdiction over all water uses in the basin, and some argue that the Navajo Nation should be allowed to do what it wishes with its water rights without having to come to the State Engineer. A result of the recent drought is that some of the water rights administration issues are now highlighted, and the State and the Navajo Nation are discussing where there might be opportunities to try to address some of these concerns through the settlement. Most of the public comments made today are comments that have been submitted in writing previously. Mr. Whipple stated that at this point he did not know what the outcome of the continuing discussions might be, but that Commission staff certainly will give due consideration to all comments.

Questions from the Commissioners:

Commissioner White asked about the comments made with respect to the 10-year averaging of irrigation uses under the proposed settlement and how that would compare to the 5-year averaging of uses in the Pecos River Basin?

Mr. Whipple responded that it was similar in concept. In the Pecos Basin, rights are administered in 5-year administrative blocks. If a user has a right to divert 3.5 acre-feet per acre per year, then he could divert 17.5 acre-feet per acre of right within an administrative block of 5 years and could divert more than 3.5 acre-feet in any one year. In this case, the Act of June 13, 1962, authorized an average annual diversion amount for the Navajo Indian Irrigation Project, but did not specify an averaging period. The settlement proposal is to use a 10-year running average, which would be consistent with the authorizing language for the San Juan-Chama Project that is included in the same Act. The San Juan-Chama Project has a 10-year running average limit as to how much water it can divert from the San Juan Basin over to the Rio Grande Basin. Under 10-year averaging, the Navajo Indian Irrigation Project would be limited in the 10th year as to its diversion and depletion of water based on its uses the previous nine years and the amount of water needed to beneficially irrigate up to 110,600 acres that year. There have been concerns that the Navajo Nation could not use water for nine years and then in the 10th year call for ten-years worth of water; however, Mr. Whipple indicated that he believes that current beneficial use requirements and prudent management of the Navajo's water uses in the current year and the following nine years make such a scenario not possible or realistic.

AGENDA ITEM #4 – CONSENT AGENDA:

Commissioner Espinosa moved, Commissioner Garcia seconded, to approve the Consent Agenda. The motion carried unanimously.

AGENDA ITEM #5 – SECRETARY REPORT:

Secretary D' Antonio reported on the following items:

Training for judges - Staff of the office has been working with the state Supreme Court and law community on a training program for new judges. In the past there have been some decisions that the courts made that were not very consistent, and we are starting to get involved with the judiciary. We have set up an hour and a half mandatory training and judicial enclave scheduled for June where we will have our water rights experts present a water law course for the new judges, actually existing judges as well. There will be additional opportunities for more training on water law for the district court judges. This is the New Mexico style version of water courts where we have an appointed judge in each of the districts to handle water issues.

Funding issues – Staff has been working on finding a nexus with our federal counterparts for some projects that would provide federal funding to replace what did not pass in this year's legislature. We have submitted a proposal for some adjudication water rights settlement administration or active water resource management and endangered species act issues in conjunction with the Governor's Office in trying to obtain some federal funding. This funding would come through the Bureau of Reclamation. The total amounts to about \$5.5 million and another \$2 to \$3 million for special data acquisition, which is our aerial digital imagery that will be a state-wide aerial project, and also, a big portion of the Pecos River augmentation project, possibly in excess of \$30 million. It all depends on the federal authorization bill that goes through this year.

Hearing's Unit – Our Administrative Litigation Unit has 70 active administration cases, 19 enforcement cases, four that are at the court of appeals, and anticipates about 20 hearings in the next 5 months with our two hearing examiners. We may bring on another hearing examiner to help us with that load.

Water Legislation –

SB 87 – This bill creates an "acequia project fund" within the Water Trust Board to allow donated money to the Water Project Fund for use on acequia projects. Hopefully we can use some of that money to help us with our ISC program, the acequia rehabilitation program that works in conjunction with the Corps of Engineers, and those cost share programs to take a little more of the burden off the acequias.

SB 301 – Livestock Water Tank Regulation is a follow-up on last year's House Joint Memorial 4 that we are looking at surface water uses that were exempt under the current statutes. The bill removes loopholes for exclusions for the use of surface water for livestock purposes that was really being used for aesthetic purposes and taking water from downstream users. That bill, especially in Northern New Mexico, affects a lot of the stream flow users, a lot of the acequias that were dependent upon that flow.

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SB 313 – Permission for Produced Water is directly applicable to this part of the state. It is a bill that PNM had pursued, and it is taking water from the oil and gas drilling for cooling at the San Juan Generating Station. The benefit it provides is that it is water that is typically injected back at a very deep level, over which the State Engineer does not have jurisdiction because there is not a further use of that water. We supported that effort; that water is going to be cleaned up and used for cooling purposes but not put into any other active main. There is an end source there—it is really a closed-loop system, and the water is not put to a further beneficial use. It is going to help the Farmington area when you look at the amount of water, potable water, that gets taken out of the system to use for cooling purposes that is evaporated and lost.

SB 356 – This is the bill that Chairman Dunlap was interested in, which is a bill that allowed for mutual domestics to provide water to commercial livestock operations. My understanding is that bill was signed by the Governor.

Joint News Conference - We had a joint news conference on March 5th with Tourism and State Parks at the State Engineer's Office on recreational opportunities and reservoir levels throughout the state. Reservoir levels are going to be low but we anticipate having a decent recreational season through the 4th of July. Water levels are going down significantly, especially in the southern part of the state. The Navajo Lake area is going to stay around the 70 to 75 percentile in terms of capacity throughout the summer, so up here it looks pretty good.

Active Water Resource Management – We are pursuing active water resource management working towards priority administration. We have looked at a few key areas of the state where we are promulgating rules and regulations, getting measuring and metering devices in place, and hiring water masters. We have just had our first press visits in the Santa Fe, Las Vegas, and Española areas to roll that program out, and we have project management staff that is looking at different basins within the state. We have designated Project Management Teams, and we are moving forward to work toward that priority administration which we need to develop within the state.

Staff – We have a few key vacancies within our office. The Director of the Water Rights Division, we had interviews this week to fill that position. We also have the Governor's liaison for Indian water rights issues that is vacant, and we are looking at possible recommendations for the Governor. We also have a vacancy from our retiring Bureau Chief in our Water Use and Conservation Bureau.

Rio Grande Compact Commission – We have a meeting coming up next week in Alamosa, and the week following that is the Pecos River Compact Commission meeting.

AGENDA ITEM #6 – STAFF REPORT:

Director López reported on the following:

LFC Analyst – Introduced Paul Aguilar as the new Office of the State Engineer/Interstate Stream Commission Legislative Finance Committee analyst. We just met him this last week, and he has informed us that he intends to attend many of these meetings and become familiar with our issues.

Rio Grande – Secretary D'Antonio just mentioned the Compact Commission meeting that is coming up next week. In anticipation for that meeting we held an Engineer Advisors meeting in February on the 23rd through the 27th in Albuquerque. We dealt with accounting issues and basically a review of operations on the river all through 2003. Relative to the accounting issues and although these numbers have not yet been approved by the Commission, our accounting basically tells us that the credit coming at the end of 2003 will be 54,000 acre-feet. Under the Relinquishment Agreement that we had entered into last year with Texas, Texas had agreed that they would accept a relinquishment of up to 95,000 acre-feet if we had that, so our understanding of that agreement would be that they would have accepted the entire 54,000 acre-feet. However there is disagreement between New Mexico and Texas as to whether that credit amount should be reduced for evaporation on a monthly basis or solely on a calendar-year basis. As a result of that disagreement first of all I declined to sign the accounting sheet to basically protest that methodology and the changes in BOR operations as a result of that methodology, and secondly, we agreed that I and the Texas Engineer Advisor would recommend a relinquishment of 53,000 acre-feet with the remaining 1,000 acre-feet to remain as a New Mexico credit that we would direct the BOR not to release without explicit direction from the Compact Commission. One other significant issue that was discussed at length in the Engineer Advisors meeting had to do with endangered species, specifically the willow flycatcher and the fact that Elephant Butte Reservoir levels are dropping and the salt cedar and willows are following the reservoir levels down. Those salt cedars and willows are prime habitat for the willow flycatcher, and they are growing incredibly fast, perhaps as much as 15 feet a year. That creates the very real possibility that we could get some willow flycatcher habitat, with willow flycatchers moving into that area, and then somebody challenging us if we try and bring the reservoir levels up at some point. With that in mind the Engineer Advisors have requested to begin discussions immediately with the Bureau of Reclamation and Fish and Wildlife Service.

This last year for the ESA Middle Rio Grande Collaborative Program there has been some concern from Senator Domenci about the pace of movement of that program. There are a large number of entities that are involved. As a result of his wanting to streamline that process he legislated basically the creation of an Executive Committee that would be limited to nine entities, I believe, and right now the state has five agencies that are participating in the Endangered Species

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Act collaborative program. However for this Executive Committee we will have a single vote; I and Steven Farris from the Attorney General's Office will jointly serve on that Committee with a single vote.

Pecos River – We have signed three lease purchase agreements; five more are coming soon. The RFP closed just a few days ago, and we have six proposals. It was a very complex RFP, and that probably limited the number of proposals that we got. The Pecos River Compact Commission meeting will be on April 1st.

San Juan River – The shortage sharing agreement has been endorsed by all of the water users in the basin. BOR is currently working to obtain approvals for subcontracts necessary for that cooperative agreement.

Gila River – Negotiations with Arizona continue. We believe we have agreement finally on some operating parameters under which New Mexico could take its water that it should have coming to it under the 1968 Act. We have come to conceptual agreement on a terms sheet as well. We do have an impasse relative to federal funding of the New Mexico unit of that, with Arizona insisting that funding is much less than we feel that it should be. That probably will be something that will be dealt with by the congressional delegation. There is a mark-up hearing occurring in Washington, DC on April 7th. I do not believe that there is any testimony required on our part. That particular river and the potential settlement has been in the news recently in an article in the Albuquerque Journal raising some concerns given the fact that the Gila River is the last free-flowing river in New Mexico.

Commissioner Espinosa stated that she had stepped out briefly and wondered if there had been a discussion of the budget that had been appropriated by the Legislature to the OSE/ISC.

Mr. Pease stated that he has talked with the Chairman about that issue, and it was decided that the Commission Finance Committee would be meeting soon with Mr. Garcia of the Program Support Bureau who would provide a briefing on the budget appropriated by the Legislature at the next ISC meeting.

Director López stated that although he preferred to wait on a general budget briefing there were a few big budget requests that were made, specifically the Pecos settlement. We had requested \$20 million to make up for the \$20 million we were unable to access last year. That did get funded; however our additional \$30 million capital request did not get funded. Additionally, I don't think that we got any of our capital requests included. A couple of important ones to the ISC are additional funding for the pilot project extension and funding for natural resource litigation, so basically as we review this budget we are prioritizing our initiatives given what we did get.

Commissioner Espinosa commented that she appreciated that we are adjusting our priorities based on what was provided in the budget for the next fiscal year. She stated that it was of concern because of the memorials that have passed which require the expenditure of funds.

AGENDA ITEM #10 – REQUEST FOR APPROVAL OF CID UNDELIVERABLE ALLOTMENT LEASE AGREEMENT FOR 2004, FOR DELEGATION OF AUTHORITY TO THE DIRECTOR TO EXECUTE THE AGREEMENT AND FOR ENCUMBERING \$1.1 MILLION DOLLARS FOR THE LEASE:

Dr. Rao requested the Commission to approve the CID Undeliverable Water Allotment Lease for 2004 that has been included in the Commissioners' packet materials, a delegation of authority to the Director to execute the agreement and the encumbrance of \$1.1 million for the lease.

Questions from the Commissioners:

Commissioner White asked if Dr. Rao expects to get any water this year.

Dr. Rao responded that he would expect 3,000 to 4,000 acre-feet based on what we see today.

Commissioner White moved, Commissioner Wilcox seconded, to approve agenda item #10. The motion carried unanimously.

AGENDA ITEM #11 – APPROVAL OF RESOLUTION OF THE INTERSTATE STREAM COMMISSION DIRECTING THE COMMISSION'S COMPLIANCE WITH THE OPEN MEETINGS ACT:

Karen Fisher stated that the Open Meeting Act requires that the Commission annually adopt a resolution regarding compliance with the New Mexico Open Meetings Act. This is the proposed resolution for this year. Last year's resolution was adopted in early April of 2003, so it is that time again. This resolution is substantially the same as last year's resolution.

Commissioner Espinosa inquired if any legislation was passed that required changes to the resolution.

Ms. Fisher stated that there had not been any mandated changes; the only thing that was changed was the relevant dates.

Commissioner Garcia moved, Commissioner Wilcox seconded, to adopt the resolution. The motion carried unanimously.

AGENDA ITEM #12 – SET FUTURE MEETING DATES, OTHER BUSINESS AND INFORMATIONAL ITEMS NOT REQUIRING ISC ACTION:

Chairman Dunlap stated that the next meeting would be April 21st in Santa Fe.

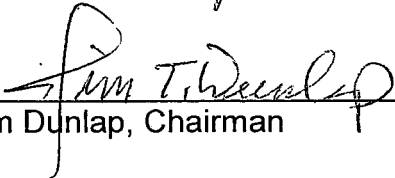
Director López commented that if anything major occurred with the Navajo Nation Water Rights Settlement he would recommend that meeting be moved to Farmington.

Commissioner Garcia moved, Commissioner Sanchez seconded, to meet on the 21st of April in Santa Fe. The motion carried unanimously.

AGENDA ITEM #13 - ADJOURN: Commissioner Wilcox moved, Commissioner Garcia seconded, to adjourn the meeting. The motion carried unanimously. The meeting was adjourned at 4:20 p.m.

Minutes were prepared by M. Lee Pease and edited by Director López.

Approved at the April 21, 2004 meeting of the Interstate Stream Commission.



Jim Dunlap, Chairman

4-21-04

Date