

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

October 24, 2000

The regular meeting of the State of New Mexico Interstate Stream Commission (ISC) was called to order on October 24, 2000 by Commission Chairman Richard Cheney at 9:02 a.m. in Room 317 of the State Capitol Building, Santa Fe, New Mexico.

A quorum was present as follows:

Members Present:

Richard Cheney, Chairman
Hal Engle, Vice Chairman
Thomas C. Turney, Secretary
John Bulsterbaum
Philip "Bob" Grant
Harold "Sonny" Houghtaling
Palemon Martinez
Hoyt Pattison

OSE/ISC Staff and Outside Counsel Present:

Norman Gaume
Bhasker Rao
Mary Helen Follingstad
Rolf Schmidt-Petersen
Craig Roepke
Lee Pease
Lazlo Lazowska
John Stroud
Matthew McQueen
Perry Abernethy
Tammy Zokan
Bennett Raley
Daryl Schwebach
Paul Saavedra
John D'Antonio

Chairman Cheney stated that Commissioner Gunaji would not be present at today's meeting.

APPROVAL OF THE AGENDA [Exhibit A]

Commissioner Engle moved to approve the agenda. His motion was seconded by Commissioner Bulsterbaum and passed without opposition.

CLOSED SESSION. Discussion of current and threatened litigation in accordance with the Open Meetings Act NMSA 1978, Chapter 10, Article 15, Section 1, Subsection H (7).

Commissioner Bulsterbaum moved to meet in closed session pursuant to the Open Meetings Act NMSA 1978, Chapter 10, Article 15, Section 1, Subsection H (7). The motion was seconded by Commissioner Engle and passed without opposition.

The Commission met in executive session from 9:10 to 11:22 a.m.

Chairman Cheney announced that the closed session discussion was limited to current and threatened litigation in accordance with the Open Meetings Act NMSA 1978, Chapter 10, Article 15, Section 1, Subsections H (7).

APPROVAL OF MINUTES: August 16, 2000

Secretary Turney moved to approve the minutes of August 16, 2000. The motion was seconded by Commissioner Pattison and passed without opposition.

SECRETARY'S REPORT

Secretary Turney announced that John Stroud is now the ISC's General Counsel and that Ted Apodaca will no longer be serving as General Counsel. Mr. Apodaca will continue to serve as General Counsel to the State Engineer. He added that Matthew McQueen and Tammy Zokan are assigned as ISC Legal Staff. The intention is to provide legal personnel dedicated to the ISC's endangered species and other issues. There will be continued collaboration and cooperation between the State Engineer legal division and the ISC.

Secretary Turney reported that the Animas La-Plata authorizing legislation is moving forward through Congress. He expressed disagreement with certain language in the legislation that erodes the authority of the State.

Secretary Turney announced implementation of new Middle Rio Grande guidelines for administration of water rights in the area from Cochiti to north of Socorro. The guidelines require an applicant to hold water rights for offset of maximum river depletions caused by permitted groundwater pumping with leasing of initially unneeded water rights. Past practice has been to allow ground water pumping with an unsecured requirement for future acquisition of water rights as the delayed affects of groundwater

pumping on the Rio Grande were realized. Secretary Turney said he expected opposition to this change.

Secretary Turney reported that water rights settlement negotiations continue with the Navajo Nation. For two years, meetings with the Navajo Nation have been enlightening for both parties. The Navajos and OSE have separately advanced proposals. The OSE's proposal will provide for development of Navajo Nation water rights but otherwise will maintain the status quo that has developed over the past 50 years. The Navajos have expressed interest in this. Secretary Turney feels the reason is that the settlement would be tied into substantial federal projects, such as the Gallup-Navajo Pipeline, and the Navajo Nation would be willing to enter into a settlement to get the pipeline. As a result, the OSE is now proceeding to the next step which is formal negotiation with the Tribe on this issue.

Secretary Turney informed the ISC that a letter is contained in the meeting packet from the Secretary of the Environment Department. Secretary Turney reported that he became aware of this issue by reading an article in the *Santa Fe New Mexican* about a contract that had been awarded to the Forest Guardians by the Environment Department for planting 15,000 cottonwood trees along the Santa Fe River downstream from the Santa Fe wastewater treatment plant. Secretary Turney expressed concern that this will have the potential effect of increasing depletions. He reported that he has already been threatened with suits by downstream irrigators who claim that Santa Fe's pumping is reducing their water supply. Secretary Turney said he will require offsetting water rights. The Secretary of the Environment Department has verbally reported to Mr. Turney that he won't proceed with this project until there is further exploration on the water rights issues. Chairman Cheney commented that he had read the article and his intention is to ask the OSE legal staff to prepare to file a lawsuit requesting an injunction. Mr. Cheney asks, with the consent of the ISC, that the OSE Legal Staff be prepared to do this, as OSE has not been notified that the contract will be held in abeyance until the water rights issues are settled.

STAFF REPORT

Mr. Gaume reported on the following topics:

ISC Staffing. A new Administrator was hired, effective October 16. Mr. Gaume welcomed Mr. Lee Pease, a retired Naval officer. Mr. Pease has most recently been employed by the Tax and Revenue Department where he has been promoted several times. He holds a M.S. in Administrative Science.

Mr. Gaume expressed appreciation for the ISC staff's extremely hard work. He particularly recognized Rolf Schmidt-Petersen's effective lead of the Rio Grande team, Bhasker Rao's work on the Pecos, John Whipple's efforts on the Colorado River, Mary Helen Follingstad's on Planning, and cited Craig Roepke's effectiveness at having tackled difficult issues on Costilla Creek.

Arkansas River Shiner. The meeting packet contains two letters prepared by Jay Groseclose relative to the Arkansas River Shiner. The issues are related to the U.S. Fish and Wildlife Service's (USFWS) declaration of critical habitat for the Shiner. The USFWS proposes that the entire reach of the Canadian River in New Mexico, starting two miles below Ute Dam, would be declared critical habitat. USFWS previously requested comment, and the May 10 letter is a response to that request. The ISC offered to visit with UWFWS and corrected some mistakes, including the USFWS identification of Ute Dam as a Reclamation facility. They did not accept ISC staff's offer to discuss the issues in person and subsequently issued a proposed critical habitat rule, an economic analysis report and environmental assessment. The October 16 letter responds to serious deficiencies in all three of those documents.

San Juan Recovery Implementation Plan. The long-term federal funding legislation has been approved by the Congress. Mr. Gaume reported that he believed it has been signed into law. The total share of all the Upper Colorado River Basin states for this program is \$17 million, and that is to be paid by the states of Wyoming, Colorado, Utah and New Mexico. New Mexico's share is approximately \$2.7 million. The New Mexico Legislature appropriated \$350,000 last year, and ISC is seeking the remaining funding in the next legislative session.

White Paper to Communicate Key Issues relative to Water Administration. For the past several weeks, ISC staff has been at work to prepare a white paper to communicate key issues facing the ISC and OSE throughout the State of New Mexico relative to water administration. Mr. Gaume anticipates a final draft of the paper in the near future.

Delivery under Pecos River and Rio Grande Compacts. Conditions this year on the Pecos have been very adverse due to the drought. Most reservoir storage has been exhausted. Santa Rosa and Sumner Reservoirs were full at the beginning of this year. They are now empty, and New Mexico is obligated to deliver half of those volumes across the state line. Mr. Gaume anticipates a significant shortfall in the delivery to the state line this year. Dr. Rao estimates a 2000 shortfall of approximately 10,000 a.f. or higher. The current credit is 22,900 a.f. It is possible, given the magnitude of historical debits, that the 2000 debit could exceed the cumulative credit.

Conditions have also been adverse on the Rio Grande. Conditions for compact deliveries are adverse due to drought conditions, near maximum evaporation from Elephant Butte Reservoir, and disconnection of the Rio Grande channel from the Elephant Butte Reservoir pool. However, due to the emptying of upstream reservoirs this year for endangered species operations, the ISC projection is that there will be a credit situation on the Rio Grande of perhaps as much as 50,000 a.f. This would bring the cumulative credit to more than 200,000 a.f.

Middle Rio Grande Endangered Species Act Collaborative Program. The ISC and the ESA collaborative program sought federal funds to deal with Rio Grande silvery minnow issues. It appears that Senator Domenici's efforts have resulted in adding approximately \$6 million to the federal agencies' budgets. Mr. Gaume stated that none of the federal

agencies requested any funding to implement the Silvery Minnow Recovery Plan, even though that plan had been signed by the summer of 1999. The ESA Workgroup requested \$1.2 million in funding for initial implementation of that recovery plan. The ISC requested substantial funding to initiate a comprehensive hydrologic evaluation of the Rio Grande below San Acacia. ISC staff will be meeting with the Bureau of Reclamation and the Corps of Engineers to plan the use of this federal funding.

Investigation of the Gila River/Central Arizona Project. ISC staff has launched its investigation of the Gila River/Central Arizona Project development in southwestern New Mexico. Meetings have taken place with the Black Range RC&D. Staff is preparing its work plan to revisit Gila River waters in New Mexico in exchange for Central Arizona Project waters downstream.

Costilla Creek. Craig Roepke, ISC Hydrologist, functioned as Costilla Creek watermaster all summer. He spent an unusual amount of hours including being there every Sunday morning at 2 a.m. to start the weekly dam release. He also personally supervised the distribution of the storage and direct flow waters to New Mexico users and to the four interstate delivery points. He found apparently longstanding errors in the USGS gaging. Through his substantial efforts, the ISC has a much better handle on Costilla Creek issues and administration.

Los Pinos River. There is an interstate water issue on Los Pinos River, a tributary to the Conejos River. The Colorado State Engineer and Colorado water users complained that New Mexico water users weren't letting water through to Colorado. Mr. Roepke has investigated the claim with the assistance of Lionel Maestas, retired ISC staff engineer. A 1913 New Mexico federal district court decree governs the distribution of waters out of the Los Pinos. The resolution is that New Mexico water users have stated they will operate within the constraints of that decree.

The meeting adjourned for lunch at 11:45 a.m. and reconvened at 1:00 p.m. with all eight members present.

REGIONAL WATER PLANNING COMMITTEE REPORT

Mary Helen Follingstad reported that the Regional Water Planning Committee of the ISC met on October 23 to discuss the status of the water planning program. She referred the Commissioners to the agenda for that meeting which is contained in today's meeting packet. The following direction was provided:

Official Water Planning Map. The Committee has postponed the adoption of an official map. Instead, the existing map will be utilized as a "working map" in order to maintain flexibility. She reported that if areas of the state are identified as not having been addressed in a regional water plan, ISC staff will provide recommendations to the Commission.

Contract with Six Southern Pueblos Coalition. A contract is being negotiated. The six Pueblos have reportedly each passed resolutions to participate in regional water planning.

Eastern Plains Plan. This regional water plan will be reviewed by staff for acceptance purposes by the Commission. It is anticipated that this plan will be presented to the Commission in January or February of 2001.

Lea County. Lea County's plan is complete. Staff anticipates a presentation to the Commission at its December meeting.

Rio Arriba. The contract with Rio Arriba has been expired but will be re-established with no substantive changes.

Review of Regional Water Plans. The status documents included in the supplemental packet were presented to the Water and Natural Resources Committee on October 17 in Deming.

Draft Water Planning Funding. The proposed 2001 funding legislation will be discussed with water planners on October 25 at 9 a.m. in Albuquerque at a meeting jointly sponsored by ISC and Water Dialogue.

Capital Funds Request. ISC will request \$1.5 million for water planning.

Status of Work Tasks and Scopes with Framework State Water Plan. The Committee determined that a separate meeting was necessary to discuss the strategy for public involvement in the preparation of the framework state water plan, to be scheduled in January.

Ms. Follingstad reported that the supplemental packet also contains a list of meetings of the ISC's Water Planning Committee with various groups across the state to resolve disputes and work with regions on plan progress. A September 6 meeting in Silver City, which Commissioner Bulsterbaum attended, to discuss updating the Gila River/CAP study is not included on the list.

Commissioner Bulsterbaum moved to accept the report of the Water Planning Committee. The motion was seconded by Commissioner Martinez.

Chairman Cheney asked for clarification regarding funding for the Lower Pecos Valley Water Users Organization. Ms. Follingstad responded that additional funding water provided to the Lower Pecos Valley regional water planning entity to have the work they completed to date reviewed by their contractor Balleau Groundwater, Inc., to make sure all data is in order and to assist in the evaluation of alternatives. Additional funding in the amount of \$20,000 was from the FY2000 ISC operating budget.

Chairman Cheney asked when the work would be completed and what comprises the Lower Pecos Valley Water Users Organization. Ms. Follingstad described the organization and stated she anticipates completion in the spring of 2001. Chairman Cheney asked Tom Davis if this was the same region to which \$50,000 in additional funding was provided previously in response to the region's assurance that those funds would be sufficient to complete their plan. Mr. Davis responded that this is the same region and that some of the \$50,000 is still in the process of being utilized.

Chairman Cheney asked about the ISC appropriation request for \$1.5 million and if this money provides for completion of the regional plans. Ms. Follingstad reported that is the intention. She added that the ISC has requests for funding of implementation of completed plans. Chairman Cheney stated that regions should request their own implementation funding.

Commissioner Bulsterbaum said the Committee's meetings with the regions to increase communications and hasten progress on the plans have been effective. He urged the Committee to continue this role.

Chairman Cheney called for the vote and the motion was passed without opposition.

PRESENTATION: The Great Salt Basin in Otero County

Howard Shanks and Tom Springer of the Tularosa Basin Regional Water Planning Committee presented details relative to the activities of the Hunt Building Corporation which has declared its intention to pump approximately 45,000 a.f. per year of groundwater for various purposes, including agriculture in New Mexico and Texas and export of water to El Paso, Texas. The Tularosa planning committee has devoted its last two meetings to the proposed activity by Hunt. A public hearing was recently held and attended by water users, ranchers, farmers, and a representative from Timberon and from the Solar Observatory area. Tularosa Basin Regional Water Planning Committee has accelerated its activities and anticipate that the Tularosa Basin Regional Water Plan will be completed in January. Their purpose of presenting information at today's meeting is to share details of their research.

Vice Chairman Engle suggested that the concerns that all have over use of the Salt basin may be correct, in that overdraft of the basin could destroy the quality of the water for New Mexico as well. He said this matter requires thorough investigation before the State Engineer allows very heavy pumping in that area.

Secretary Turney informed the Commission on his recent activities regarding the Salt Basin. He met with Salt Basin water interests and was asked if the State Engineer was going to declare the basin. At that time, his intention was not to do so and he so informed them. Subsequent to his informing Salt Basin interests that he would not declare the basin, he met with legal staff and concluded that he could not regulate the

export of water unless the basin from which the water would be pumped was declared. At that same time, he received a letter from Hunt (included in packet) stating its intention to export water. Secretary Turney stated that on October 17, he declared the basin. He stated that declaration of a basin does not mean the basin will be closed to appropriations. It only means that water users are required to obtain a permit to drill a well and appropriate water.

Secretary Turney commented that the Tularosa Basin regional water planning program should consider use of the Salt Basin water by the Santa Teresa Port of Entry.

Commissioner Martinez asked if there is a consensus in the area relative to the exportation of water to El Paso. Mr. Shanks responded that the regional water planning committee has not yet come up with final recommendations. He believes the residents are not opposed to exporting, but would be concerned if one entity benefited over others by exporting.

Commissioner Grant asked how much of the water that Alamogordo is using is coming from the desalinization project and its cost. Mr. Springer added that Alamogordo is not using desalinated water yet. They are doing a pilot study and they are indicating that it may be favorable to utilize some of the saline water at around \$1.00 or \$1.15 per 1,000 gallons. The presenters commented that Alamogordo has not considered using Salt Basin water until now. Commissioner Grant suggested that there is great potential for the unused water. The presenters concurred.

Commissioner Grant asked for clarification of Hunt's purchase of a large ranch in New Mexico. Mr. Shanks responded that they purchased what he believes is a 3,000 acre farm which is not presently being farmed. About 2,000 acres have been irrigated historically. Commissioner Grant asked for clarification of its location, and Mr. Shanks responded that it is just north of the state line.

Commissioner Bulsterbaum inquired if the military installation had been active in participating in the plan. Mr. Springer responded that Holloman Air Force Base has been participating.

PRESENTATION: Estancia Basin Regional Water Plan

Mr. Richard Spencer presented details on the prioritized activities and budget to implement the Estancia Basin Regional Water Plan. Mr. Spencer stated that the Commission's acceptance occurred about one year ago. He reported that they are at the stage of implementation and that effort is difficult but progressing.

Mr. Spencer reported that people are applying for water rights at an increased pace. Accomplishments in the last year include obtaining administrative assistance, funding through the Soil and Water Conservation District, and involvement in public education. Their purpose today is to update the ISC on the implementation activities and to discuss implementation funding.

Terrain management is identified in their plan as a critical activity in the recharge area. Several other activities have been generated out of the result of their plan. The U.S. Forest Service now has a watershed health proposal for 10,000 acres in the recharge area to do some silvaculture treatments, enhance plant and wildlife diversity, and improve water quality and quantity. The National Conservation Service has identified the Estancia Basin as a geographic priority area. Current funding of \$200,000 will be expended for brush management, water retention, irrigation management, and other water management activities. Senator Sue Wilson has drafted some initiatives on woodlands treatment in the recharge area. On the local level, they have generated the Gallegos Canyon Watershed Enhancement Project. Funding in the amount of \$170,000 has been secured through the S&WCDs and private partners. This involves a 40,000 acre watershed with 250 landowners. There is a cost share program on land treatments and conservation practices that will be put in some place, some monitoring on creek flows, water quality and water levels. Some partners on that project include three S&WCDs, University of New Mexico, Sandia Labs, New Mexico Forestry, and NRCS. County funding of \$25,000 have been secured for information and education, administrative support and possibly some monitoring.

ISC funding is needed to provide monitoring of the saline groundwater movement on the eastern side of the basin. Salt water movement needs to be understood.

Projects have included modeling with involvement by Sandia Labs. A practical management type model is beginning to be developed. This is important because of the anticipated variables in the basin, such as population growth. From 1990 to 1995, the actual rate of increase in population was 42%. For the last five years, it is estimated that population increased at a rate of 35%. The management model can manipulate those parameters and yield results of impacts.

Mr. Spencer introduced Paul Davis, formerly a hydrologist with Sandia Labs. He is now a planning subcommittee member. Mr. Davis reported that he was 20 years with Sandia and led an effort in water resources there. As part of that effort, he developed models called "dynamic simulations." They differ from models that the OSE utilizes and are designed for management purposes. Mr. Davis reported that he has earlier provided information to Commissioner Grant and to Ms. Follingstad and will gladly provide information to any of the Commissioners.

Mr. Spencer reported that they now have volunteered legal assistance from Law and Resource Planning Association. The lack of legal counsel was a shortcoming pointed out by ISC staff at an earlier planning meeting.

Areas of concern include the blending of administrative policy and regional water planning effort. Mr. Spencer reports that their charge from the Commission was to come up with sustainable water supplies, yet there is a 40-year planning horizon used in actual water resources administration. The planners wish to have local input on administrative requirements. The need to address unused permitted and declared water

rights in the basin is also an issue. If these are all pumped, the basin is in trouble, notwithstanding all the new applications coming in. They report over 12,000 a.f. applied for since 1995 when planning began. There are water banking issues that need to be worked out.

Mr. Spencer identified water rights administration as a regional water planning concern. He introduced Mike Schwebach, the Vice Chairman of the regional water planning committee and a farmer in the basin. Mr. Schwebach reported that he has been Vice Chair for the duration of water planning efforts. As a farmer, he expressed concern about depletion of the aquifer and the need for closing down the appropriation of water rights, which to date he reports has not been done by the OSE. According to the water plan, if the water is conserved and is pumped at same level they are currently, there is a 120-year supply of water remaining in the basin. In the last two years, there have been more than 6,000 a.f. of water applied for. He stated the basin is administered under a block system and there are hundreds of thousands of acre feet of water available for appropriation. Mr. Schwebach said this water could be exported over the mountains. Mr. Schwebach commented that he hopes that the ISC will assist the region with un-appropriated water in the basin.

Secretary Turney made the ISC aware that Mr. Schwebach is uncle to Daryl Schwebach, the new Administrative Services Division Director. He said that the OSE has administered the basin under what is referred to as a "block system." The basin is divided into blocks, each having an amount of water available for appropriation. The system has been in place for forty years. Times have changed, and it is appropriate to re-examine and refine water resources administration rules in the Estancia Basin.

Secretary Turney informed the Commission about an application that is currently the subject of district court litigation. The application was partially approved to allow an expended place of use but not an increase in diversion. The lawsuit requires resolution with an OSE administrative model. Another protested application was filed by Entranosa Water Coop. The hearing officer's recommendation to the State Engineer was to deny it. This application has been returned to see if in fact the applicant wishes to have it evaluated according to an OSE administrative model. The new model is a refinement of the block system and a much more sophisticated tool and establishes the critical management areas based on draw-down. Furthermore, it recognizes different levels and identifies aquifers. Secretary Turney anticipates this model will be completed in the next three months. He said he could not predict if the final model will lead to the closure of the basin. Secretary Turney said he also met with, and gleaned input from, the water planning region on the issue of domestic wells.

Commissioner Grant asked if the planners were adamantly opposed to moving water out of the basin. Mr. Spencer responded that that was the original mandate of their planning. Commissioner Grant asked if a farmer has water rights and sees an opportunity to sell or lease those to someone outside the basin, should he not have a right to make money on his water. Mr. Spencer responded that he did not disagree with that. However, water quality could be compromised, as they learned in the planning

process. Mr. Spencer suggested that the preference among water users in his basin is to make money from the water themselves rather than export the water for others benefit.

Commissioner Pattison inquired as to how many acres are covered by the water plan in the Estancia Basin. Mr. Spencer responded that 2,600 square miles were involved (approximately 400,000 acres). Commissioner Pattison commented on their plan for cloud seeding, which is expensive. Mr. Spencer asked if the efforts on the eastern side of the state were viable. Commissioner Pattison responded that the cloud seeding in the east is in conjunction with the High Plains Water Conservation District in West Texas, and for the whole area there is no definitive data, as the effort has only been going on for four years. However, the ISC feels it is worth doing and is being utilized throughout the United States. It would indicate that there is a pay off, for example, in the Ogallala Aquifer. In the Midland area, there is an indication of a rise in the water table as a result of 40 years of seeding. Commissioner Pattison reiterated that the project in eastern New Mexico is experimental, but a worthwhile effort. Mr. Spencer responded that they would be interested in conducting an experimental project.

Commissioner Bulsterbaum stated the statute that charges the Commission with regional water planning also anticipates action by the Commission to reserve water for the future use of the region, as identified in the regional water plan. He said the regional water planning committee needs to consider the statutes and requested the assistance of regional water planning staff to research the pertinent statutes for the committee.

Commissioner Engle cited the two plans just presented as illustrations of the importance of regional water planning. The process is uncovering management problems that need to be addressed. He suggested that planning will be valuable for the future and completion of regional water plans should move forward as vigorously as possible. The ISC is trying this year to raise another \$1.5 million for regional planning. Eight regions are presently un-funded and need to get to the level that Estancia Basin enjoys to-date. He asked the Estancia and Salt Basin representatives to speak to any legislators they can and explain this need.

Commissioner Martinez commented that the Estancia Basin's plan was the first acceptance. He asked if ISC should consider region's needs subsequent to acceptance. Mr. Spencer shared that he feels that is a key issue right now. They have worked hard in developing their plan and the overall concept was to fully implement the plan, otherwise, water will run out. Implementation requires that a great number of entities be involved. He cited education and information as one area of need for ISC funding. He also proposed that issue of monitoring could be reviewed again on a broader basis.

CONSIDERATION: Adoption of ISC Regional Water Planning Map

Mr. Gaume reported that, as previously reported by Mary Helen Follingstad, the Water Planning Committee recommends that the Commission not consider adoption of an official map of the 16 planning regions.

FINANCE COMMITTEE REPORT

Commissioner Grant reported that the Finance Committee met on October 23. He asked that Mr. Gaume and Mr. Schwebach report on Committee actions.

Mr. Gaume reported that the Committee discussed the FY2002 appropriation request as submitted by the OSE and the ISC to the Department of Finance and Administration and the Legislative Finance Committee. The Committee also discussed the Capital Budget Request that the ISC staff has put forward. The latter has not yet been submitted by the Secretary. The third item discussed by the Committee was a request from staff for additional encumbrances to fund contractors working under the Surface Water Evaluation Program, principally in the areas of biology, geomorphology work on the Pecos, participation efforts to uphold ISC's joint lead agency responsibilities for the Pecos River Programmatic Environmental Impact Statement, and representation of the State of New Mexico in Endangered Species Act collaborative, mediation, and litigation forums.

Mr. Gaume reported that the ISC in the spring of 1999 directed its staff to enter into a substantive, collaborative problem-solving program with regard to the Rio Grande Silvery Minnow. One of the efforts undertaken is in cooperation with many other entities comprising the Middle Rio Grande Endangered Species Act workgroup (ESW). The workgroup requested Senator Domenici provide budget additions totaling \$1.2 million for implementation of initial activities of the Silvery Minnow Recovery Plan. Mr. Gaume reported to the Finance Committee that Senator Domenici did provide those funds and additionally provided approximately \$5 million more to the Bureau of Reclamation and the U.S. Corps of Engineers to deal with endangered species issues in the Middle Rio Grande. It remains to be seen how those funds will be expended.

Mr. Gaume also reported on an October 23 meeting held with Lt. Governor Bradley on the potential long-term funding request for the ESW at the request of the City of Albuquerque and the Middle Rio Grande Conservancy District (MRGCD). Albuquerque and MRGCD advocate the Governor sign the agreement on behalf of the State of New Mexico and 10% state funding of the plan to be developed to comply with the Endangered Species Act in the middle Rio Grande. They presented an estimate prepared by City of Albuquerque consultant Tom Pitts protecting total costs of approximately \$100 million over the next 10 years. The ESW proposes 90% federal funding. Lt. Governor Bradley said he would make decision at this time and would brief the Governor. Mr. Gaume stated the ISC will have a major role in providing non-federal funding of this recovery program.

Mr. Gaume said the Finance Committee also reviewed the concept of constructing some artificial habitats for the Silvery Minnow called "refugia." The preliminary estimate from ISC's biological consultant of the capital cost of building one such of these refugia is \$1.2 million. Mr. Gaume stated that it is too early to ask the ISC for a commitment of funding for this effort, but recommended strongly that the ISC proceed to implement refugia. Mr. Gaume reported that he is meeting with the U.S. Fish and Game Department on October 25 to discuss their role in refugia.

Mr. Gaume then said the last items on the Finance Committee agenda are next on the meeting agenda, items 12 and 13.

CONSIDERATION: Approval of the Capital Budget Request and Ratification of FY2002 Operating and Trust Fund Appropriation Request

Mr. Gaume briefed the Commission on the FY2002 severance tax bond funding request. The projects are requested for funding. The first is a request for \$1.5 million for regional water planning. Mr. Gaume shared that it is staff's opinion that this amount of funding is sufficient to complete regional water plans for all regions. He noted that this funding will not guarantee completion, because it is up to the regions to actually do the work to complete the plans.

The second request is for \$250,000 for the ISC to develop a Ute Reservoir Property Master Plan and that would include not only the state's property, but also include some degree of master planning for private property in Quay County. The planning would be accomplished in cooperation with Quay County, Logan, Tucumcari, and the State Parks Division. The intention of the ISC's participation would be to protect the quality of the water in Ute Reservoir. Mr. Gaume asked the Chairman and Commissioners to recall that Quay County Commission Chairman Briscoe previously presented a Quay County Commission resolution to the ISC requesting that it participate in joint planning to protect water quality in the reservoir.

The third capital request is for the San Juan River Basin Recovery Implementation Program (SJRIP) in the amount of \$2.3 million. The SJRIP is the result of approximately ten years of collaborative work in the San Juan Basin. The SJRIP is itself the set of reasonable and prudent alternatives for compliance with the ESA that provide ESA compliance allowing for completion of the Navajo Indian Irrigation Project and the Animas La-Plata Project, continued use of the San Juan-Chama project and other important projects for the State of New Mexico. Mr. Gaume reported that federal funding legislation providing for the \$100 million program has passed Congress recently. The 2000 Legislature appropriated \$350,000 of the State of New Mexico's \$2.75 million share.

Commissioner Engle moved to approve the capital budget request. The motion was seconded by Commissioner Martinez and passed without opposition.

Mr. Gaume then reported on the necessary ratification of the FY2002 operating and trust fund appropriation request.

Mr. Gaume reported that he presented the staff's request at the August 16, 2000 meeting of the ISC. Secretary Turney said that as of the meeting date he had not yet put together its overall budget, which for FY2002 is required by the Governor to request no more general fund support than in FY2001. Secretary Turney said in August there might be adjustments in the appropriations request after all the divisions' appropriation requests were integrated into the overall OSE/ISC budget. Mr. Gaume reported that this process resulted in cuts from the budget request approved by the ISC. Approximately \$135,000 was reduced from the ISC budget in order for it to remain flat. The principal reason for that is that across the Agency, and within the ISC in particular, the personnel costs are substantially in excess of the current fiscal year's budget. Because personnel costs are up, the expense budget had to be adjusted down by the same amount. The only changes that were made from the budget that the Commission approved on August 16 were cuts in General Fund operating budget line items.

Mr. Gaume said a reorganization is underway motivated by the Legislature's direction to go to a program-based budget, as illustrated by the organization chart contained in the budget document. The State Engineer decided to organize around programs. The first of four programs is called Water Resource Allocation and combines the Water Rights and Technical Divisions. The Water Rights Protection Program is the old Legal Services Division and the Hydrographic Survey Bureau. The third program is the Interstate Stream Compact Compliance and Water Development Program, which includes the ISC staff and some additional staff from the OSE, principally to deal with the acequia program. The fourth is the Program Support program which is under the Administrative Services Division. Therefore, the program budgets cannot be directly compared with the previous division budgets.

Chairman Cheney asked if the Commissioners understood that the intent has been to raise salaries in order to recruit and retain quality employees. To hold the total budget flat, operating costs have to be reduced by the amount of personnel cost increases. Secretary Turney added that the OSE has worked on studies of employee salaries for nearly ten years and concluded that the OSE's employees were underpaid compared with those positions in surrounding states. The OSE was able to provide from its operating budget in FY2001 25% of the theoretical increase that resulted from employee pay grade increases determined to have parity with New Mexico's surrounding states. Mr. Schwebach commented that the OSE was able to increase overall salaries by \$350,000.

Commissioner Grant emphasized the Legislature did not give additional appropriations for increased salaries, so that this compensation had to come out of the operating budget.

Mr. Gaume added that the Water Resources Master I position, which is the journeyman engineer or scientist position and requires substantial experience and a degree, was

found to be five pay grades below the competitive levels in the surrounding states, and concluded that had contributed to past recruiting difficulty.

Mr. Gaume then reported on the total OSE/ISC budget. He said the form containing the total agency budget shows that the budget includes trust fund balances totaling \$10.981 million. This is the amount that is coming out of the two trust funds administered by the ISC.

Mr. Gaume then reported that the meeting packet Tab 12d contains the appropriation request estimate for the ISC Compliance and Water Development Program. The total request is \$13.3 million. The General Fund support for this is \$2.467 million. \$10.66 million are from the trust funds. Tabs 12e and 12f contain the budget submittal for the two trust funds on which the proposed appropriation of fund balances was just discussed.

Mr. Gaume reported that all the uses of the trust funds are itemized in the "E-4 forms" under Tab 12d. He said these are unchanged from the items that were described at the August 16 meeting.

Mr. Gaume said that Tab 12g contains the Agency's three budget initiatives. In past years, these have been called "special appropriations," but this year they are referred to as "budget initiatives." The Agency submitted three of these. Mr. Gaume reported on the strategy employed to get funding for critical needs. There will be substantial non-recurring General Fund revenues available this year. OSE will request multi-year appropriations this year from this non-recurring revenue source. This year's funding request is intended to be expended over the next several years to accomplish these initiatives.

The first initiative requests an appropriation of \$14.4 million to complete loading water rights information into the WATERS database program over the next four years. The second initiative is for hydrographic surveys and adjudications, and that request is \$15.2 million to be expended over the next five years for work associated with the Lower Rio Grande and Pecos River Basin adjudications. The third initiative is for the ISC and is entitled "environmental litigation." It requests \$2.1 million for nine staff positions over the next four years to deal with litigation and ESA compliance issues that comprise so much of the ISC's current workload.

Commissioner Pattison asked if the funding for these initiatives will come from surplus revenue funds. Mr. Gaume responded that this is the intention.

Commissioner Grant asked that Secretary Turney share details of his meeting with the Governor on this topic. Secretary Turney reported that Governor supports this type of approach. The theme of this year's legislative session will probably deal with economic development. All state agencies are putting together flat budgets, and the ISC/OSE is no exception. Secretary Turney reported at a cabinet meeting that if he was required to

submit a flat budget, there would probably be no economic development in the state. The Governor responded that he would support the OSE's initiatives at some level.

Mr. Gaume reported that at the August 16 meeting the ISC's proposed uses of trust funds were discussed. There are additionally three requested appropriations from the trust funds for OSE activities. One is funding for continuation of the Middle Rio Grande Technical Investigations. This is a longstanding OSE program that has been funded at \$600,000 per year. Funding for FY2000 and FY2001 has been appropriated from the ISC trust funds. It is proposed to be funded from that source in FY2002. There is \$825,000 base funding for the WATERS project that was funded from the trust fund last year and it is proposed to be funded from that source again. Additionally, there is \$2.5 million in contractual services for the Legal Services Division for litigation efforts statewide. The total trust fund support for OSE programs totals \$3.92 million.

Commissioner Grant moved to approve the ratification of the FY2002 Operating and Trust Fund Appropriation Request. The motion was seconded by Commissioner Engle.

Commissioner Pattison asked if there are additional funds that will be requested for the water rights adjudication. Secretary Turney responded that there would be funds requested, at approximately \$14.2 million over the next four years. Mr. Schwebach reported that he is unsure of the exact dollar amount at this point, but what was included as one of the three program initiatives is only the start of the accelerated adjudication funding. He said the total amount may be in the tens of millions of dollars over the next several years.

Chairman Cheney called for the vote, and the motion passed unanimously.

Mr. Eric Galloway, New Mexico Environment Department, relative to Item 12 on the agenda, offered to the ISC information on the Environment Department's research studies on geomorphology and biology on the Pecos River and the Rio Grande.

CONSIDERATION: Request for Approval of Encumbrances to Fund Contractor Work Orders and Progress/Status Report on the Surface Water Evaluation Program

Mr. Gaume reported that this item is a request for the Commission to authorize additional encumbrances for Surface Water Evaluation Program contractors. The professional services contract awards were approved at the May 17, 2000 ISC meeting. Work is underway by seven of the eight contractors. The report contained in the meeting packet summarizes the financial aspects of the program, including work orders awarded to date. This report will be supplemented in the future with a summary of each work order and its completion status. The first few pages of the report are an overall financial summary of the approved encumbrances and the work order authorizations. The following pages contain spreadsheet for each of the eight contracts.

Staff's first request is for approval of an encumbrance for contractor S.S. Papadopoulos and Associates from the Pecos River Special Appropriation in the amount of \$100,000. The circumstances that have made this necessary are as follows. The OSE had selected SS Papadopoulos to be the primary Rio Grande consultant, but their expertise is needed to deal with claims by the U.S. Fish and Wildlife Service (USFWS) that double the requested low flow at the Acme gage. Mr. Gaume asked the Commissioners to recall that in the summer of 1998, there was a document put forward in the context of the Bureau of Reclamation's environmental assessment process that said that there was a need for 10 cubic feet per second minimum flow at the Acme gage during drought conditions, 35 during normal years. That was replaced by a report from the USFWS that requested 35 cubic feet per second at all times based on the amount of habitat needed for the Pecos bluntnose shiner. Related correspondence stated that any reduction in that flow would reduce habitat, which would cause a take under the Endangered Species Act. ISC staff has questioned that and not yet received a satisfactory explanation as to the basis of these federal conclusions. Most recently, a new report called "a draft finding" from the USFWS requests a minimum flow of 71 cubic feet per second at the Acme gage. This is based on an entirely new theory that includes a flow requirement of 71 cfs at all times is needed to maintain sand ripples in the bed of the stream, and that the sand ripples are necessary for reproduction of the bluntnose shiner. Mr. Gaume said that additional scientific disciplines need to be engaged to evaluate the scientific justification for the 71 cfs minimum flow requirement. Papadopoulos and Associates has the best person to work on this, however, they have not yet been authorized to expend Pecos River funds.

Mr. Gaume requested two additional encumbrance authorizations for the ISC's biological consultant, S.W.C.A., who has been heavily engaged in supporting litigation and mediation activities on both the Pecos and the Rio Grande. Mr. Gaume reported that he needs ISC approval to encumber \$400,000 from FY01 appropriation from the Improvement of the Rio Grande Income Fund for the activities on the Rio Grande and \$250,000 from the Pecos River Special Appropriation for activities on the Pecos River.

The fourth request is to support ISC's efforts as a joint lead agency in the Pecos River on the water management plan and environmental impact statement. Mr. Gaume said that he and Dr. Rao agreed that with current workloads including litigation, Mr. Rao cannot devote the halftime project management requirement of the joint lead agreement. Mr. Phil Soice is a very well qualified contract employee who has done considerable work with ISC previously regarding issues Pecos River and is familiar with the Pecos River. His services, as ISC's co-project manager for the jointly prepared Pecos River EIS, require an encumbrance of \$120,000 to Parsons Engineering Science.

Chairman Cheney asked how the USFWS justifies the need for larger flows when the historical flow of the Pecos has been 9 or 10 cfs for extended periods each year and the endangered species have increased in numbers at those flows. Mr. Gaume responded that he cannot answer that question. He said the ISC has made that assertion and asked for response from the USFWS and the Bureau of Reclamation (BOR). He noted

that representatives from the BOR are now present at the meeting. Mr. Gaume reported that BOR managers have told him that the ISC's arguments are valid and that an answer is deserved; however, that answer has not been forthcoming. In recent correspondence on this topic with Mr. Gabaldon, the Area Manager for BOR, Mr. Gaume pointed out that ISC's previous requests regarding this question have apparently fallen on deaf ears. That letter was written about four weeks ago, and Mr. Gaume has not yet received a response.

Chairman Cheney expressed dissatisfaction ISC has not received any responses to its requests for justification of the higher flow. He requested that Mr. Gaume write another short letter asking for a response. Mr. Gaume agreed to do so. Chairman Cheney then asked that a photocopy be sent to Senator Domenici's office.

Mr. Bennett Raley proposed that that explanation could be requested in the context of ongoing mediation efforts. Chairman Cheney responded that he would prefer both courses of action.

Commissioner Grant moved to approve the above detailed encumbrances. The motion was seconded by Commissioner Houghtaling and passed without opposition.

Mr. Tom Davis, of the Carlsbad Irrigation District (CID), requested that the ISC provide to him photocopies of the work orders and status reports that were just approved. He commented that relative to numbers of flows, etc., that the CID would pursue a similar course of action vis-à-vis the BOR.

DISCUSSION: Water Banking Concepts and Draft Legislation

Senator Sue Wilson and Representative Pauline Gubbels distributed copies of the current water banking draft legislation and discussed their efforts over the last three years to implement water banking legislation. Senator Wilson said that New Mexico needs additional laws to authorize and limit water banking functions. She shared that she has personally wondered why the United States has selected New Mexico for their endangered species tests and not Colorado or other states. She feels this may be related to the fact that the Legislature has not provided adequate appropriations to the OSE to get water rights adjudications completed. She suggested that there is no active management and administration of New Mexico's water. While there is in place a forfeiture provision that states that if water is conserved that water is not subject to forfeiture, there is no type of economic incentive to encourage the use of conserved water, nor to encourage the implementation of the infrastructure to conserve water. Water banking provides those functions. She cited Arizona as having been aggressive in its water banking initiatives and said that in California, due to water banking, increases in agriculture usage have resulted.

The proposed legislation has been modified to incorporate local implementation with state oversight on changes in beneficial use. Leasing of water through a water bank

also allows land owners to retain water rights; this is also an important issue relative to the preservation of agricultural integrity. Finally, Senator Wilson cited compact delivery requirements as an additional basis for the need to "bank" water. She concluded her comments by stating that with water banking, conservation is encouraged, aquifers are recharged or water is stored elsewhere, and calls on water can be avoided. Better management of water and constructive encouragement of conservation will allow the storage of water during fruitful times and allow a conduit to the ISC and any other market that is in need of water, so that one sector is not pitted against another.

Representative Gubbels provided some detail on the most recent version of their bill, which was presented in last session. They continue to work on improving the proposed legislation. The very first version established a "bank board". Due to stakeholder input, they abandoned the concept of the board, and the second version assigns to the ISC the oversight and management responsibilities. However, stakeholders want more local control. The current version has been changed so that it does not create a new act, but adds some new sections to law and amends some sections. This strategy was used in order to keep the concept and procedures as simple as possible. In Section 1, there is new wording that deals with ISC's additional powers, the establishment of state/regional water banks. It would require ISC to hold public hearings and to establish rules and regulations for management of water banks. Section 2 addresses concerns of the irrigation and conservancy districts and provides for local water banks that would operate under state rules. The irrigation and conservancy districts and acequias may provide for the transfer of water pursuant to the provisions that now exist in law. An entity authorized to maintain a local water bank may establish requirements for the deposit of the water used in that local water bank. The new law would provide local water banks the authority to temporarily transfer bank water to new places of use located within the banking district without formal proceedings. It does not, however, allow local banks to authorize changes in the purpose of the use. Representative Gubbels commented that this is an area the drafters of the legislature are still debating and would seek comment from the State Engineer, as he is the one who has the authority to change purpose of use. Section III amends the Groundwater Storage and Recovery Acts to provide a banking director within the ISC. The draft legislation clarifies that water stored in the bank is not subject to forfeiture. Representative Gubbels announced that a workshop will be conducted on water banking at the WRRI annual New Mexico water conference in December.

Chairman Cheney commented that all the Commissioners are aware that this is a timely issue. Secretary Turney reported on active river management that includes measurements, management and markets. Markets will be important for the State of New Mexico, once measurements and management are established. New Mexico is growing and its finite water resources require more active management. He said local control is a good idea but only with adequate oversight and rules. Only wet water rights should be marketed, and compact deliveries must be protected. He said the State Engineer is authorized by law to promulgate rules and regulations and establish water conservation programs, such as the ISC's Pecos River Conservation Program and changes in the forfeiture statute now provides that any water right owner can place

water rights in an approved water conservation program. Secretary Turney asked if this might not be an alternative way to establish that which the drafters of the legislation are trying to accomplish.

Senator Wilson said this concept does not provide the financial incentives needed to encourage conservation. Chairman Cheney communicated that the ISC has had some discussion of conservation programs as an alternative to water banking and this might be more acceptable to more stakeholders. He said ISC in order to do this would require additional resources and personnel and perhaps minor changes in law.

Senator Wilson expressed appreciation for any input that ISC will offer.

Commissioner Bulsterbaum asked about the entities that would operate local water banks. Representative Gubbels responded that the draft version identifies irrigation districts and acequias. Commissioner Bulsterbaum suggested that much of the state is not covered by either irrigation districts or acequia commissions. He reported that southwestern New Mexico has nine closed groundwater basins. The Mimbres, basin, for example, is not covered by a conservancy district, nor an acequia system. He suggested that this needs consideration.

Chairman Cheney expressed concern that with the problems that are ongoing relative to compliance with the compacts and the fact that New Mexico is an "upstream" state. Banking legislation should not compromise ISC's ability to ensure compact compliance. For this reason, a water conservation program within the ISC would be a better solution. Senator Wilson commented that the ISC is specifically cited as an entity that would be able to participate in purchasing or leasing of water. Chairman Cheney cited the approximately \$50 million expended to date to remedy Pecos River Compact delivery shortfalls as an example.

Commissioner Pattison asked if the proposed water banking legislation would make it possible for an acequia or irrigation district to have a "conservation pool." Representative Gubbels responded affirmatively. Commissioner Pattison said his concept was that an acequia would create a conservation pool or bank. Transfer applications should go through the State Engineer's process, giving people opportunities to protest, and providing for use of OSE expertise to judge the impairment of other water rights and compact obligations. In areas where there are no acequias or conservancy districts, the conservation pool could be set up as a basin-wide local entity. He asked if this seemed possible to incorporate in the legislation. Both Senator Wilson and Rep. Gubbels responded affirmatively.

Senator Wilson added that the legislature does reflect this, via local boards that promulgate their rules and submit to the OSE for approval. Change in purpose of use would require OSE approval. The local bank however, would have authority to approve changes in place of use. Commissioner Pattison expressed his preference to see the process change as little as possible from the existing legislation. The less one disrupts the status quo, in terms of legislation, the better it is, he suggested. Instead of an

individual farmer, for example, selling his water rights, and the buyer applying for the OSE for change of purpose and change of place, the conservation pool could do that, and this would likely be on a lease basis. The pool would have continuing revenue possibilities.

Commissioner Martinez cited the example of what ISC and CID are doing. This is a lease program that is voluntary to the farmer. It has been in place for ten years and is a practical method. He expressed that he favors local control and believes it is taking place. His concern is in doing something that legitimizes practical processes that are taking place, and identified water sharing within an acequia as an example. When water is not used by an individual acequia member, the water accrues to the benefit of those who do. The water bank concept allows sharing to happen under a legitimized process, and it addresses the forfeiture issue. A record keeping system is important. The Taos Valley Acequia Association is a federation of 64 acequias with computerized record keeping capability that could implement local water banking.

Commissioner Grant recognized the work of the two presenters, and their interested stakeholders, to try to resolve a very serious problem in the state that exists under existing law. If a water bank was in effect in the Middle Rio Grande, this would be where the BOR would have to go to purchase water for their environmental requirements.

PRESENTATION: Water Resources Management Needs by National Association of Industrial and Office Properties (NAIOP)

Ms. Eileen Grevey-Hillson presented the needs, concerns and activities of the NAIOP and the Albuquerque Economic Forum as regards to water administration. She said NAIOP represents the real estate development community, including developers, title companies, bankers, engineers and architects, etc. The second organization comprises owners and CEOs of businesses in the Albuquerque area. She reported that until recently, there has not been a great deal of involvement of the Albuquerque business community in water issues. An increased awareness among community members, due to increased press on water issues, has lead the business community to become proactive and represent their views and concerns at forums where water issues are discussed. The presenter asked for the ISC's guidance in helping them to help the State of New Mexico. Ms. Grevey-Hillson then presented the NAIOP's program, which calls for involvement at the federal, state, regional, and local levels of government.

Chairman Cheney communicated that the ISC is delighted to have the support of the NAIOP and Economic Forum. He asked Ms. Grevey-Hillson that their organizations help present to the legislatures the various activities and challenges of the ISC. He particularly pointed to the potential depletion of the trust funds. Chairman Cheney commented specifically on the need for increased flow metering and monitoring in order to inventory and administer water in New Mexico. This represents substantial costs.

Secretary Turney also communicated appreciation for the support of these organizations. He proposed that on a local level they support the City of Albuquerque's

surface water diversion. The Cities of Santa Fe and Albuquerque have to implement surface water diversion of San Juan-Chama water to protect their rights to use San Juan-Chama water and to provide for economic viability. He then suggested that NAIOP and the Economic Forum could provide substantial benefits by discussing the benefits with communities having San Juan-Chama water of their improved uses of that water supply. Many of the communities have San Juan-Chama Project contracts that will expire in the relatively near future, and people assume they will be renewed. Secretary Turney indicated that this is a dangerous assumption. There are examples of contract renewals that have been denied, and the possibility of a perpetual contract exists. All the communities of the Rio Grande need a perpetual source of water for their economic viability. Ms. Grevey-Hillson communicated that they have explored this issue with the City of Los Lunas and will do so with other communities.

PRESENTATION: Conclusions of the Middle Rio Grande Water Supply Study

Mr. Gaume presented the conclusions of the Middle Rio Grande Water Supply Study, prepared by S.S. Papadopoulos and Associates, Inc. for the ISC and the Corps of Engineers. This study resulted from a special appropriation to the ISC for regional water planning in the Middle Rio Grande sponsored by Senator Pauline Eisenstad. The appropriation required use of 50% matching funds provided by the Corps of Engineer. He referred Commissioners to the executive summary of the study in the meeting information packet and to the complete report on the OSE/ISC web page. His presentation was based on slides with graphics and photographs.

Mr. Gaume summarized the results of the study, with emphasis on the Middle Rio Grande water budget. The purpose of the study was to quantify, in terms of probability of annual occurrence, the water supply available to the Middle Rio Grande under the constraints of the Rio Grande Compact and recognizing the extreme variability of the annual flows of the Rio Grande and its tributaries. The study also represents current development conditions, including the present effect on the river of groundwater pumping and associated wastewater return flows. He described the inflow terms of the water budget, including native Otowi gage inflows net of the requirement to deliver a variable majority of those inflows through Elephant Butte Reservoir to below Elephant Butte Dam, San Juan-Chama water, which has averaged 78,000 acre feet per year at the Otowi gage over the period 1990-1998, tributary inflows between the Otowi gage and Elephant Butte Dam, and base ground water inflows. Under the Rio Grande Compact, the Middle Valley is allowed to deplete the water associated with the latter three sources.

Mr. Gaume said the San Juan-Chama Project provides an important water resource for the Middle Valley. To represent current development conditions, this study assumed that uses of this water that occurred during 1990-1998 would continue. The uses of that water have been almost exclusively irrigation, and recently extensive uses for environmental purposes. This study will not show the extreme amounts utilized this year as supplemental water for the Rio Grande silvery minnow. Mr. Gaume said that the accuracy of measurement of tributary inflows is not adequate and pointed out that base

ground flow was determined by using the OSE groundwater flow model, as there is no way to directly measure this.

Mr. Gaume referred to water budget graphic representations that were developed in the study. Depletions in the water budget are in four general categories: agricultural consumptive use, riparian consumptive use, open water evaporation, and depletions of groundwater that eventually effect the stream system. The study concludes that agricultural consumptive use, taking precipitation into account, is about 230,000 a.f. per year, and riparian and open water consumptive uses (not including reservoirs) are approximately the same value. Reservoir evaporation when Elephant Butte Reservoir is full can be equal to those other two terms; on average, it is less, about 124,000 a.f. per year.

The present level of use of groundwater in the Middle Valley is approximately 157,000 a.f. per year. Impacts on the stream system were calculated using the OSE model; this model is a third or fourth generation model resulting from the U.S.G.S. research conducted in the earlier part of the 1990s. The model was used to calculate the future impacts on the river from present uses of groundwater, full utilization of existing groundwater permits, and additional groundwater development.

Commissioner Grant indicated that most people don't grasp the concept that the ISC doesn't just deliver water to Elephant Butte Reservoir. Rather, it must deliver the water to below Elephant Butte Dam. This is why the Middle Rio Grande, and not the Lower Rio Grande, gets charged with evaporation from the reservoir.

Mr. Gaume said that urban depletions on the river are rather small because most urban depletions are from stored groundwater and river depletions are largely offset with wastewater returns. However, those groundwater uses are not sustainable in the Albuquerque area and Santa Fe areas. Albuquerque proposes, as does Santa Fe, to develop and consume their San Juan-Chama water. When they do that, the urban depletion of surface water becomes much larger in proportional share of the total.

Commissioner Grant said the water budget graphic shows that out of the 1.1 million acre feet that flows annually past the Otowi gage, the only surplus that exists for the Middle Rio Grande is 19,000 a.f. If demand is increased by more than the 19,000, there is a deficit position. Mr. Gaume added that the delayed impacts of existing groundwater pumping will provide more than 19,000 acre feet of additional river depletions. Mr. Gaume pointed out that there are substantial error terms on many of the components. Refinement is needed. He said the overall study conclusion is that the water supply is barely adequate to meet existing demands and compact delivery obligations with much urban depletion supplied from groundwater and current uses of San Juan-Chama water that are not entirely consumptive.

Mr. Gaume summarized with the following conclusions: (1) The water supply is highly variable; (2) existing supply is barely able to meet present demands including compact obligations, and (3) debit status in the annual compact deliveries can be expected as

often as credits can be expected. Observations: (1) the Middle Rio Grande water supply is singular; its components are highly interconnected; (2) the water supply is only diminished by consumptive uses of water; conservation will only improve the supply to the extent that it reduces consumptive uses and incidental depletions; and (3) any increased water in one segment sector of water use must be offset either by decreases within that sector or by other sectors.

Mr. Gaume indicated that the US Fish and Wildlife Service is interested in the future sources of water depletion in the Middle Rio Grande. The ISC will be answering that question in a letter to them. Future depletions increases include the delayed effects of current groundwater pumping, the full exercise of existing water rights that have not been fully developed under permits that have been approved by the OSE, growth, municipal consumptive use of San Juan-Chama water (which will use supplies that are now being met by depletion of groundwater), riparian and riverine habitat improvements, and changes in the operation of federal facilities to accommodate environmental values (e.g. the ESA).

Mr. Gaume concluded by stating that the challenge of the ISC is to see that compact delivery obligations are complied with while satisfying existing uses, environmental uses, and new depletions.

Vice Chairman Engle presided over the meeting for the next several agenda items, in Chairman Cheney's absence.

CONSIDERATION: Request for Approval of the Agreement with the Bureau of Reclamation Providing for Maintenance of Areas Previously Cleared of Phreatophytes

Mr. Gaume summarized this agreement and deferred detailed questions to Dr. Bhasker Rao. The agreement provides for the continued maintenance of previously cleared phreatophytes. The agreement is between the BOR and the ISC. The actual work is carried out by Carlsbad Irrigation District. The request is for continuance of a longstanding annual agreement. Mr. Gaume responded to Commissioner Grant that the cost of the agreement is \$150,000.

Commissioner Bulsterbaum moved to approve the agreement. The motion was seconded by Commissioner Houghtaling and passed without opposition. (Chairman Cheney and Secretary Turney were not present for the vote.)

CONSIDERATION: Request for Approval of the Agreement with the Bureau of Reclamation Providing for Replacement of Pecos River Depletions and Lease of Water

Mr. Gaume asked the Commissioners to recall that the ISC has previously entered into three different agreements with the Bureau of Reclamation, which require Reclamation to use its best efforts to offset depletions associated with re-operation of Pecos River

facilities for endangered species purposes. To the extent that those best efforts are insufficient, Reclamation agrees to lease water from the ISC Pecos River Conservation Program. The first agreement was for a four month period starting in November 1998. The current agreement expires at the end of October 2000. As directed by the Commission at its last meeting, ISC staff has negotiated a new contract to extend this arrangement three years or until the Pecos River Environmental Impact Statement is completed. The agreement is currently in Washington, D.C., being reviewed by the Dept. of the Interior. To the extent that Reclamation's best efforts are insufficient to offset their depletions, they agree to lease water from the ISC conservation program at the rate of \$102 per a.f. which is the ISC's cost of the water that it previously acquired. Mr. Gaume stated that staff intends that no water will be leased to Reclamation under the agreement and that Reclamation's best efforts will be sufficient.

Commissioner Bulsterbaum moved to approve the agreement. The motion was seconded by Commissioner Houghtaling, and the motion passed without opposition. (Chairman Cheney and Secretary were not present for the vote.)

CONSIDERATION: Request for Approval of Agreement with Carlsbad Irrigation District (CID) Providing for Construction of Bypass Channel from Black River Diversion Canal to Black River

Mr. Gaume reported that this agreement, between ISC and CID, provides funds for CID's construction of bypass channels from the Black River diversion canal to Black River associated with the Willow Lake Water Rights acquisition. The construction of these channels was one of the contingencies required to be completed before the Willow Lake water rights purchase closing. This agreement provides \$142,000 in construction costs, plus \$2,000 in administrative fees to CID for their construction of these channels. Because the agreement is draft form, Mr. Gaume requested delegation of authority to execute the final agreement.

Commissioner Martinez moved to delegate authority to the ISC Engineer to execute the agreement, and the motion was seconded by Commissioner Grant.

Vice Chairman Engle called for the vote. The motion passed without opposition. (Chairman Cheney and Secretary Turney were not present for the vote.)

CONSIDERATION: Offer from Carlsbad Irrigation District to Settle Dispute Regarding 1977 Excess and Undelivered Allotment Water Lease

Chairman Cheney returned to the meeting.

Mr. Gaume reported that a letter dated October 3, 2000 from CID is contained in the meeting packet. The letter offers to settle the dispute relative to the 1997 excess and undelivered allotment water lease. The second paragraph of the letter contains the counter offer calculation but the math is incorrect. He reported that Chairman Cheney

had discussed this problem with CID Chairman L.A. Johnson. Mr. Gaume reported that the Commission's determination was that with the correction of the math error, subtracting 998 feet of previous lease overdeliveries, as cited in the letter, from the settlement offer by the ISC of 6,017 a.f., would leave an amount to be delivered to the Pecos River before the end of 2002 of 5,612 a.f. Mr. Gaume indicated this is the Commission's counter offer.

Mr. Tom Davis apologized for not having been previously aware of the math error in CID's October 3 letter. He indicated that the actual number for the over-delivery in total since 1977 is 1,736 acre feet, and not the incorrect figure of 998 acre feet. He said that the corrected CID settlement offer would be 4,281 acre feet. He said that CID would settle for the 4612 acre feet suggested by Commissioner Gunaji at the previous ISC meeting. Mr. Davis reported that he reviewed the accounting in its entirety and deliveries were as follows: 1997 under-delivery was 179.9 a.f.; 1998 over delivery was 781; 1999 over delivery was 1,089, and year 2000 was 55 a.f. under delivery. This results in a positive over-delivery from 1997-2000 of 1,736 a.f.

Chairman Cheney moved to approve the figure of 5,612 as the settlement figure. The motion was seconded by Commissioner Martinez.

After some discussion, Chairman Cheney amended his motion to accept the figure of 4,612 for settlement. Commissioner Houghtaling seconded the amendment.

The amendment passed via a 6:1 vote, with Commissioner Grant voting no. (Secretary Turney was not present for the vote.)

Vice Chairman Engle then called for the vote on the motion. The motion passed via a 6:1 vote, with Commissioner Grant voting no. (Secretary Turney was not present for the vote.)

Chairman Cheney presided over the remainder of the meeting.

CONSIDERATION: Ratification of Agreement Placing Fort Sumner Irrigation District Water Rights Leased to Bureau of Reclamation in Pecos River Conservation Program

Mr. Gaume reported that Reclamation entered into a forbearance agreement with Fort Sumner Irrigation District to not irrigate approximately 1,200 acres at a compensation rate of \$301 per acre for the remainder of the irrigation season, effective the middle of September. ISC staff looked in detail at whether or not this transaction would require a water rights permit and concluded that the best way to protect the water rights would be to put them into the ISC Water Conservation Program, Pecos River portion. This was done through an agreement that was signed by Chairman Cheney. Mr. Gaume requested ratification of the agreement and delegation of authority to the Chairman to

execute an amended agreement reflecting another transaction between Reclamation and Ft. Sumner Irrigation District for the same purpose.

Commissioner Houghtaling moved to ratify the above-described agreement and to approve the delegation of authority to the Chairman to execute the amended agreement. The motion was seconded by Commissioner Grant. The motion passed without opposition.

CONSIDERATION: Request for Approval of Criteria to be Applied to Determine Suitability of Locations Associated with Private Boat Dock Applications, Ute Reservoir

Commissioner Pattison moved to accept the criteria, and Commissioner Houghtaling seconded the motion.

Commissioner Grant asked what staff would do if more than 20 boat dock applications were received. Mr. Gaume replied that if more than twenty applications initially are received, preference will be given to anyone who has previously applied for a dock and who has not installed a boat dock without a permit. The Ute Reservoir Oversight Board will determine the remaining allocation, subject to a maximum of 20.

Commissioner Martinez asked if the proposed siting criteria are an addendum to the policy. Mr. Roepke responded that this adoption of the criteria by the Commission is required by the policy. Once adopted, the criteria will become part of the policy. Chairman Cheney asked if the Commission had adopted the policy. Mr. Roepke responded affirmatively.

Chairman Cheney called for the vote, and the motion passed unanimously.

CONSIDERATION: Ratification of Contract for Sale of Ute Reservoir Water to Lake Meredith Municipal Water Authority for Construction Purposes in New Mexico

Mr. Gaume reported that the Lake Meredith Municipal Water Authority requested purchase of water from Ute Reservoir to dilute the saline water that they were planning to discharge into the Canadian River in conjunction with development of the Lake Meredith Salinity Control Project. The ISC has previously entered into similar agreements selling water at the rate of \$25 per a.f. for these same purposes. Mr. Gaume reported that based on the urgency of their request, he had telephone consultations with Commissioners Pattison and Engle and Chairman Cheney, and on the basis of their agreement that the ISC should meet this request, Mr. Gaume executed this agreement.

Commissioner Engle moved to ratify the agreement. The motion was seconded by Commissioner Martinez and passed unanimously.

Commissioner Grant asked if the Commission should not take a closer look at the price of the water, indicating that he felt \$25.00 per a.f. might be too low. He also asked if ISC has had previous agreements for this purpose. Mr. Gaume indicated that the ISC has entered into previous agreements but has actually sold only miniscule quantities of water. The rate, he indicated, at \$25.00 per a.f. is the rate at which the Commission indicated by contract that it would provide water to the Ute Water Commission for the Eastern New Mexico Rural Water Supply Project. Commissioner Engle expressed that he felt that the ISC had already established the fair market value at \$25.00 per a.f. Chairman Cheney concurred that for the intended use the price of the water seemed appropriate.

Set Future Meeting Date(s) and Other Business

Commissioner Pattison asked that ISC staff determine the expenditures of the three soil and water conservation districts involved in the eastern New Mexico rainfall enhancement project. He said the ISC has fiduciary responsibility to make sure the funds it provided are expended appropriately. The three are the S.W. Quay Soil and Water Conservation District, the Central Curry Soil and Water Conservation District, and Roosevelt County Soil and Water Conservation District. Commissioner Bulsterbaum urged that a representative of those districts be engaged in this dialogue rather than contacting employees of the federal agency that assists them. Commissioner Pattison expressed that he was aware of some dissatisfaction with the projects, and there is one more year remaining. Pending the information received resulting from this request, the ISC might want to revisit supporting the project.

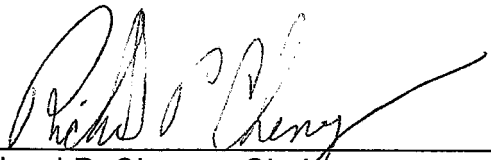
A future meeting date was discussed. It was decided that the next meeting of the ISC would take place in conjunction with the WRRRI annual New Mexico Water Conference at the Hyatt Hotel in Albuquerque. The Commission meeting would take place on the day following the conference.

Chairman Cheney asked if ISC might authorize reimbursement to Commissioner Bulsterbaum (who will be presenting at the conference) and any other Commissioners for their travel to the conference and their participation. Mr. Gaume reported that the operating budget will run out of funds this year for training and travel, however he recognized that this request is appropriate. It was decided that any Commissioners who want to attend should notify Mr. Gaume who would arrange for their registration fees to be paid.

Commissioner Grant commented that the WRRRI has a website, for those who would like to look into the details of that conference.

The meeting adjourned at 5:35 p.m.

Approved at the December 7, 2000 meeting of the Interstate Stream Commission.



Richard P. Cheney, Chairman

2/7/2001
Date

These minutes were prepared by Lazlo Lazowska and edited by Norman Gaume.

10/24/00

SIGN-IN SHEET

PLEASE PRINT CAREFULLY

FIRST NAME	LAST NAME	COMPANY	ADDRESS	CITY	STATE	ZIP CODE	PHONE
Perry	Abernethy	OSE	230 W Mumb...	SE	NM	87801	827-6150
Michael	Riley	EDID	PO Drawer 158 SWM	C.C.	NM	88001	520-6671
Erik	Galloway	NMFO	1150 St Francis Dr P.O. BOX 26110 87502	SFC	NM	87502	827-2452
Louise	JACO		Box 700 CARMONA		NM	88200	885-4857
Howard	Shanks	NRCS	Box 711 CAPITAN, NM			88316	648-2941
BENNY	COKER	NMRW	Box 460 CAPITAN, N.M				
Tom	Springer	TBRWP	P.O. Box 1301	Clondar...	NM	88317	682-3040
Tom	DAVIS	CID	201 S. Central Capitan			88220	885-5203
Mary Helen	Follingshead	ISC					
Rita	Horton	Edgewood		Edgewood	NM	88317	885-5203
Consuelo	Bohman	1000 Dancers	370 Anyte	SF	NM	87501	986-5883
Chabot	G...	LFC	Capitol Annex North 305 Doniphan St, Santa Fe	SF	NM	87501	986-4561
Dominique	Carlson	Daniel Stephens					822-9400
Richard	Spencer	EBWPC	P.O. Box 129 Mtnair, NM.	Mtnair	NM	87036	847-2941

INTERSTATE STREAM COMMISSION MEETING
ROOM 317, STATE CAPITOL, SANTA FE, NEW MEXICO

SIGN-IN SHEET
PLEASE PRINT CAREFULLY

FIRST NAME	LAST NAME	COMPANY	ADDRESS	CITY	STATE	ZIP CODE	PHONE
Charles	Hodson	EBWPC	HC 67 Box 85	Willard	NM	87003	849-1733
Michael	Schreibach	EDWPC	P.O. Box 450	McIntosh	NM	87032	589-5289
Dick	Brackett	EBWPC	1178 Laurel Park	Alber	NM	87122	797-1644
Paul	Davis	EBWPC	270 AFB	Tajique	NM	87016	384-5396
Cyle	Sharp	EAST TERRANCE EWPC	PO Box 757	ESTANCOIA	NM	87016	334-0001
Phelops	White	PVACD	Box 874	Roswell	NM	88202	622-5701
Paul	Sauerbim	OSE	PO Box 25102	SF	NM	87504	827-6120

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

February 7, 2001

The regular meeting of the State of New Mexico Interstate Stream Commission (ISC) was called to order on February 7, 2001 by Commission Chairman Richard Cheney at 9:03 a.m. at the Old Senate Chambers, Room 238, Bataan Memorial Building, Santa Fe, New Mexico.

Quorum of Members Present:

Richard Cheney, Chairman
Thomas C. Turney, Secretary
Stan Bulsterbaum
Hoyt Pattison
Philip "Bob" Grant
Harold "Sonny" Houghtaling
Palemon Martinez

OSE/ISC Staff & Contractors Present:

Norman Gaume
Mary Helen Follingstad
Rolf Schmidt-Petersen
John Whipple
Craig Roepke
Bhasker Rao
Chuck Caruso
Jack Frost
Lee Pease
Daryl Schwebach
Ted Apodaca
John Stroud
Matthew McQueen
Phil Mutz

APPROVAL OF THE AGENDA [Exhibit A]

Commissioner Pattison requested that an agenda item be added relative to the Ute Lake Water Board. **There was no objection, and Commissioner Grant moved to approve. The motion was seconded by Commissioner Bulsterbaum and passed without opposition.**

CLOSED SESSION. Personnel, current and threatened litigation, and acquisition of water rights in accordance with the Open Meetings Act NMSA 1978, Chapter 10, Article 15, Section 1, Subsections H(2), (7) and (8).

Secretary Turney moved to meet in closed session pursuant to the provisions the Open Meetings Act NMSA 1978, Chapter 10, Article 15, Section 1, Subsections H (2), (7), and 8). The motion was seconded by Commissioner Grant and passed without opposition.

The Commission met in executive session from 9:15 to 11:20 a.m.

Commissioner Engle joined the meeting at 9:40 a.m.

Chairman Cheney announced that the closed session discussion was limited to personnel, current and threatened litigation, acquisition of water rights, and pending contracts in accordance with the Open Meetings Act NMSA 1978, Chapter 10, Article 15, Section 1, Subsections H (2), (7), and 8), and that no decisions were made.

APPROVAL OF MINUTES: December 7, 2000

Commissioner Grant moved to table approval of the minutes of December 7, 2000 until the next ISC meeting. The motion was seconded by Commissioner Pattison and passed without opposition.

SECRETARY'S REPORT

Secretary Turney reported on the following items:

Legislative Session and Proposed Bills. Secretary Turney reported that he has received favorable endorsement of his budget request from the executive branch. The Governor has recommended \$10 million in special appropriations. Three bills to provide these special appropriations are being sponsored by Senator Manny Aragon. Secretary Turney reported that a number of bills introduced to date could impact water rights administration. Language endorsed by the New Mexico Acequia Commission deals with notification to acequias regarding water rights applications. Secretary Turney expressed concern about the added costs of administration and the effect the bill might have on the ability of a private owner to market their water rights.

Secretary Turney reported he has met with the Chief of the State Supreme Court regarding management and prioritization of adjudications. The OSE is trying to develop a 20-year time table to complete adjudications throughout the state and wants the State Supreme Court to provide direction and resources to the district courts.

Senate Bill 245 deals with the rural water associations' transfers water rights from domestic wells. This has been a practice of the state engineer for many years. The proposed legislation may create difficulty for the state in that the associations will not need to have water rights, but rather may make application under their membership. He said this may have negative impacts on senior water rights holders, irrigation districts, acequias and many other water users.

Secretary Turney reported concerns that the City of Santa Fe has not developed their San Juan-Chama water. It is apparent from activities surrounding the Endangered Species Act and lawsuits filed that the City needs to install facilities to take water from the river into the city. Paul Noland, a contractor to the ISC, will work with the City for three months to advise regarding City of Santa Fe development of its San Juan-Chama water.

Chairman Cheney commented on research that was once conducted by the Public Service Company of New Mexico on the diversion of the San Ildefonso and asked if this might be a feasible source of diversion. Secretary Turney responded that this alternative

would be addressed, however, the pueblo was not interested in having a facility built on their land nor in allowing the City permanent access. Secretary Turney reported that diversion of water directly out of the river will be considered.

Commissioner Pattison reported that there are over 30 bills in the House and over 20 in the Senate related to water resources issues.

STAFF REPORT

Mr. Gaume reported on the following topics:

Letter to Rep. Joe Stell/Reservoir Levels. Mr. Gaume reported that he wrote to Rep. Joe Stell in response to Rep. Stell's request for a summarization of reservoir levels and that the copy of the letter (provided in the meeting packet), which Mr. Gaume has subsequently corrected, contains a mistake. The correct figure for the value of depletions not offset by the Bureau of Reclamation is \$100,000, and not \$1,000,000. Mr. Gaume reported that subsequently, he has learned from Reclamation that the reservoir figures are slightly incorrect.

LFC Performance Audit of OSE/ISC. Mr. Gaume requested, and the Legislative Finance Committee (LFC) has agreed, to delay the initiation of the LFC performance audit until after the legislative session. The Director of the LFC communicated to Mr. Gaume that the audit is not targeted at any particular aspect of the performance. Rather, it is motivated by the fact that appropriations are increasing rapidly and that the LFC wants to audit the operation and make recommendations for improvement. Mr. Gaume added that the agency should expect a rather rigorous and thorough review of its performance and use of appropriations.

Colorado River Interim Surplus Criteria. Mr. Gaume reported that a milestone was achieved by ISC/OSE and Contractor Phil Mutz through the ISC's successful participation in negotiations of the Colorado River Interim Surplus Criteria. The State of California be reduce their excess use of Colorado River water over the next 10-15 years. Federal adoption of the surplus criteria was finalized as one of the last actions of the Clinton Administration through a signing of a Record of Decision in San Diego in January 2001.

San Juan Recovery Implementation Program. Mr. Gaume reported that this program is moving forward. He understands that the other states and federal government are anxious to execute agreements that commit the state share of funding. Mr. Gaume added that the ISC has a \$350,000 appropriation, the first allotment of state funding, and the Governor's budget contains and additional \$1.5 million for this program. Mr. Gaume reported that he anticipates that at the next ISC meeting agreements will be brought to the Commissioners for approval.

Local Leadership of Bureau of Reclamation. Mr. Gaume reported that former Albuquerque Area Manager Michael Gabaldon has been promoted. He is now in Washington and supervising all of the Reclamation's regional directors. He now supervises not only his former boss, but all of his boss' peers. There is currently no Albuquerque Area Manager. Mr. Gabaldon informed Mr. Gaume prior to leaving for

Washington that Reclamation did not intend to fill that position until the new Reclamation Commissioner is in place. Mr. Gabaldon reported that in the interim, Reclamation would rotate other regional area managers into the Albuquerque area office for short stays. Mr. Bill Rinne is the first of these and will be in the post for two months. He is the area manager of Reclamation's Boulder City area office.

Gila Central Arizona Water Development Project. Mr. Gaume reported that by the end of February the ISC will advertise a request for proposals for engineering services. ISC staff met with Reclamation and the State of Arizona in January. Mr. Gaume reported that the hurdles in developing the Gila/CAP water are immense, but it is clear that Reclamation would entertain an effort by the ISC to contract for the Central Arizona Project water. Mr. Gaume characterized Reclamation's reception of ISC as friendly and helpful, and the State of Arizona's as concerned with regard to how development of Gila/CAP water might impact water users from the Gila River in the State of Arizona.

ISC Protest of Water Right by Red Bluff Irrigation District. Concern has been expressed by the New Mexico Pecos River Commissioner regarding a protest of a water right application filed by Red Bluff Irrigation District by the ISC staff. Mr. Gaume stated that this was necessary in order to protect the ISC's compliance under the Supreme Court Decree because this application proposes to transfer water that is now below the Red Bluff accounting gage to above the gage. The application has subsequently been dropped. Mr. Gaume reported that there are issues associated with the salinity control project. Mr. Gaume reported that he wanted to make the Commissioners aware that staff has protested two other applications. One is a protest by Mr. Brantley, Carlsbad Irrigation District to also move water in a manner that would affect the Red Bluff gage. The other is a request in the Costilla area to move water from the Acequia Madre, which has a specific compact allocation, to a pond located elsewhere. ISC staff is concerned about the effect of this transfer on compact accounting administration.

Commissioner Pattison commented that there is a bill that proposes to drill water wells on the Texas line, the purpose of which is to put water in the Pecos River and enhance the state's ability to pay Texas what is due to them.

Record of Decision/EI Paso-Las Cruces Sustainable Water Project. Mr. Gaume reported that in both the draft EIS and the final EIS, the El Paso Public Service Board and the International Boundary and Water Commission, as lead agencies have refused to incorporate the OSE/ISC's assertion that permits from the state engineer will be required for changes in water use in New Mexico and that changes in the pattern of releases from Elephant Butte Dam would have to be addressed by the Rio Grande Compact Commission. Mr. Gaume reported that ISC intervened after the final EIS to try to get changes in the record of decision. The record of decision did insert the state engineer's name into the table that describes required permits and approvals that will have to be obtained for the project but includes a comment that a permit and Rio Grande Compact Commission approval may not be required. Mr. Gaume expressed his concern about this, and reported that there is a current bill introduced in the legislature to provide state funding for this project. The ISC/OSE analysis opposes that funding.

ISC Staffing. Mr. Gaume reported that the position once held by Tammy Zokan is now vacant and recruitment efforts are underway to find a qualified candidate. The Costilla Water Master position is vacant. Mr. Roepke has received a list and it is anticipated that a person will be in that position in March. Mr. Caruso and Mr. Garcia, formerly with the Technical Division of the OSE and responsible for administration of the ISC acequia program under the ISC's agreement with the State Engineer, are both now employees in the ISC associated with the reorganization of the agency around programs. Mr. Groseclose has accepted an assignment to the Dam Safety Bureau of the Technical Division.

Dates of Compact Meetings. Mr. Gaume announced dates of the following compact commission meetings: Rio Grande Compact Commission, Alamosa, March 22; Pecos River Commission, Austin, April 5; Costilla Creek Compact Commission, Santa Fe, tentatively May 10.

Commissioner Grant asked about what is typically addressed at the meetings. Mr. Gaume responded that very substantive discussions take place. The Pecos Commission no longer handles river accounting, but there are other substantive issues that the Commission discusses. Among the most substantive of topics covered are the reports from federal agencies and subsequent opportunities for the compact commission members to have frank dialogue with representatives of the federal agencies. Mr. Gaume said the compact commission meetings are open to the public.

Middle Rio Grande Water Supply Study. Providing a copy of the study to Commissioner Grant, Mr. Gaume commented that he would be happy to provide one to the other commissioners.

Snow Pack Map. Mr. Gaume distributed a copy of a map printed from the Internet. It illustrates, via color-coding, snow pack for each river basin currently as compared to average conditions. Most of New Mexico has normal or slightly above normal snow pack, compared to most of the remainder of the West which is significantly dryer than normal.

In response to a query by Commissioner Pattison, Mr. Gaume reported that the federal commissioner of the Pecos River Commission, a former employee of the Texas Natural Resources Conservation Commission, is under indictment for illegal discharge of wastewater which his company allegedly dumped into irrigation drains in New Mexico within the Elephant Butte Irrigation District.

Chairman Cheney left the meeting at 11:50 a.m. Vice Chairman Engle presided in his absence.

DISCUSSION: Proposed Legislation and Status of OSE/ISC FY2002 Appropriation Request

Commissioner Pattison distributed copies of a bill that is being proposed in the legislative session that relates to the Governor's proposed re-organization of the water administrative agencies within the State of New Mexico. He reported that he received

the copy from Mr. Lou Gallegos on February 6, and the Governor's Blue Ribbon Task Force will discuss it on February 7. It will be turned over to the Legislative Council and will be introduced prior to the 15th of February. The sponsor is unknown. Commissioner Pattison proposed that the draft has a number of serious problems. Commissioner Pattison suggested that it is quite a comprehensive proposal for reorganization and would appeal to a lot of people because it combines three state agencies and makes them two and eliminates numerous boards and commissions, including the Interstate Stream Commission. The final form will be available within the next 10 days.

Commissioner Houghtaling sought clarification as to whether the Blue Ribbon Task Force endorsed the bill. Commissioner Pattison responded that the Task Force met in August and considered a reorganization recommendations report prepared for the Environment Department by its consultant. The proposal fits in with the Governor's goal of decreased state government and the combining of state agencies. The Task Force, having only learned about the bill very recently, is discussing it as the ISC meeting is taking place. Commissioner Pattison shared that the consultant report states that stakeholders should not be informed of the contents of that report because they would find objections to it.

Commissioner Grant directed the commissioners' attention to the section of the bill that eliminates the ISC. Commissioner Pattison remarked that the same is proposed for the Water Quality Control Commission.

It was agreed that further discussion of legislation would be deferred until later in the meeting. The Commission adjourned for lunch at 12:00 noon and reconvened at 1:15 p.m.

CONSIDERATION: Quarterly Progress and Financial Status Report for the Surface Water Evaluation Program Contracts; Request for Approval of Encumbrance of Funds for Expenditure Under these Contracts

Mr. Gaume called attention to tab 8 in the meeting packet and provided a brief summary of the items under discussion: (8a) Financial summary of the contracts that make up the Surface Water Evaluation Program and a narrative summary of each work order. The narrative summary is provided in two parts: work not directly related to litigation and work that is prepared for litigation or in anticipation of litigation and therefore is confidential; (8b) Narrative report submitted by Rolf Schmidt-Petersen relative to requested additional encumbrances; (8c) Preliminary report and plan for an evaluation of the efficiency of the Middle Rio Grande Conservancy District prepared under work order by SS Papadopoulos and Assoc. Mr. Gaume reported that this report represents a 10% level of completion of the investigation the Commission will undertake of the efficiency of water use in the Middle Rio Grande Conservancy District and requirements for adequate metering to determine water balances. He commented that he will be asking ISC for approval of this item to move forward with the study itself; (8d) Scope of work for Phase III of the Middle Rio Grande Water Supply Study. Phases I and II are completed under contract with Corps of Engineers, jointly funded by ISC and the Corps. Mr. Gaume reported that he considers this work to be very good; (8e) Letter agreement

that proposes the ISC provide 50% funding for the Phase III effort; and, (8f) Memo identifying two additional requests for encumbrances.

In response to a question posed by Commissioner Grant, Mr. Gaume reported that the encumbrances approved by the ISC in May 2000 total \$2.1 million, additional encumbrances were approved at the October 24 meeting, and that there are substantial appropriations in the current fiscal year for this program that are not yet encumbered.

Mr. Gaume then summarized encumbrances for which staff is requesting ISC approval: (1) \$250,000 for S.S. Papadopoulos (SSPA) to conduct the efficiency study of the MRG; (2) \$600,000 for SSPA to physical investigations of the San Acacia reach of the RG to understand surface and ground water connections; and, (3) \$180,000 for SSPA to match funding provided by Corps of Engineers to complete Phase III of the MRG Water Supply Study.

Commissioner Bulsterbaum moved to approve the three above-referenced encumbrances for work conducted by SSPA. Commissioner Pattison seconded the motion and the motion passed without opposition.

Mr. Gaume then reported on the request by ISC staff for the approval of an encumbrance in the amount of \$100,000 for Hydrosphere Resource Consultants, Inc. to perform litigation-related Pecos River model analysis work.

Commissioner Bulsterbaum moved to approve the \$100,000 encumbrance. The motion was seconded by Commissioner Houghtaling and passed without opposition.

Mr. Gaume requested approval of an encumbrance in the amount of \$250,000 for SWCA to continue their support in litigation and mediation activities relative to *Minnow v. Martinez*.

Commissioner Pattison moved to approve the above-referenced encumbrance. The motion was seconded by Commissioner Bulsterbaum and passed without opposition.

Mr. Gaume requested approval of an encumbrance in the amount of \$100,000 for Spronk Water Engineers (SWE) to update and make improvements to the LRG surface water budget model.

Commissioner Grant moved to approve the \$100,000 encumbrance for (SWE). The motion was seconded by Commissioner Pattison and passed without opposition.

And, finally, Mr. Gaume requested the approval of an encumbrance for \$40,000 for Balleau Groundwater (BGW) to conduct a litigation-related hydrologic analysis for the Pecos River.

Commissioner Houghtaling moved to approve the \$40,000 encumbrance for BGW. The motion was seconded by Commissioner Bulsterbaum and passed without opposition.

Chairman Cheney joined the meeting and chaired the remainder of the proceedings.

DISCUSSION: Animas-La Plata Project Federal Authorizing Legislation and Associated Water Rights Issues

Mr. Mutz reported that the Congress in December of last year finally completed work and President Clinton signed legislation known as the Colorado Settlement Act Amendments of 2000. That legislation authorize construction of certain facilities of the Animas-La Plata Project which would consist of Ridges Basin Reservoir, an off-stream reservoir located southwest of Durango, a pumping plant and a conduit to conduct water from the Animas River pumping plant located in the town of Durango to the reservoir. The facilities are to be designed and operated in accordance with the hydrologic regime necessary for recovery of endangered fish in the San Juan River and are to be operated in accordance with the Animas-La Plata project compact. The authorized project includes an inactive pool in Ridges Basin Reservoir. Mr. Mutz reported that the total reservoir capacity would be about 120,000 a.f. depending upon the final design. The facilities would be operated to deliver municipal and industrial water in allocations with an average annual water depletion of 16,525 a.f. each to the Ute Mountain Ute and Southern Ute Indian tribes in Colorado, 2,340 a.f. to the Navajo Nation in New Mexico, 10,400 a.f. to San Juan Water Commission in New Mexico, 2,600 a.f. to the Animas-La Plata Water Conservancy District in Colorado, 5,230 a.f. to the State of Colorado, 780 a.f. to La Plata Conservancy District in New Mexico. These total 54,500 a.f. per year. In addition to that, the reservoir evaporation from Ridges Basin Reservoir would amount to about 2,500 a.f. per year. The total of these numbers is within the 57,100 a.f. annual depletion that was approved for the project in Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) that took place some years ago.

The legislation also authorizes a water line to augment the existing system that conveys municipal and industrial water from Farmington to Shiprock to provide about 4,700 a.f. per year to the Navajo Indian reservation near Shiprock. This could also serve Navajo communities between Farmington and Shiprock on the south side of the river. Mr. Mutz commented that this 4,700 a.f. should not be confused with a non-depletion. This is a delivery amount, and depletion would be approximately one-half, or 2,300 a.f. The construction costs allocated to the Navajo Nation for this pipeline are non-reimbursable under the terms of the legislation. The legislation provides, on request of the state engineer, that the Secretary of Interior shall sign without consideration to the New Mexico Animas-La Plata project beneficiaries, or to the ISC, the Dept. of Interior's interest in state permit 2883, in order to fulfill the non-Navajo purposes of the Animas-La Plata project. The legislation provides that this assignment shall be made in accordance with the requests of the state engineer.

Mr. Whipple then reported that the authorization to complete construction to operate the Animas-La Plata project facilities are dependent upon the facility being designed and operated in accordance with the hydrologic regime necessary to recover the endangered fish in the San Juan River as determined by the San Juan Recovery Implementation Program (SJRIP). Mr. Whipple reminded the commissioners that the SJRIP was a program in which New Mexico's participation was committed by Governor

King in 1992. The SJRIP goes through the extends through 2007, unless otherwise extended by the parties. The goals are the recovery of endangered fish in the San Juan River and proceeding with water development in accordance with interstate compacts and Indian trust responsibilities of the federal government. Recovery goals for the Colorado Pike Minnow and the Razorback Sucker are currently under development by the USFWS. Mr. Whipple reported that the draft criteria he has seen would not allow for the delisting of the species until at least the year 2012.

Under the federal recovery program, there are two types of activities which are occurring to provide for species recovery. The first is capital projects that include fish passages for range expansion, fish screens on the major diversions to prevent entrainment of larger fish, and construction of fish augmentation facilities. Public Law 106-302, signed by President Clinton in October 2000, provides for federal funding, municipal Colorado River stored project and power revenues, and state cost share for capital projects. New Mexico's share of the total capital cost is \$2.72 million of which \$430,000 is needed in federal fiscal year 2001. Of that amount, New Mexico would also be credited with monies that the Public Service Company of New Mexico (PNM) for design of the fish passage structure. Mr. Whipple reported that it is necessary to put agreements in place soon to allow state monies to be transferred to Reclamation and/or Bureau of Indian Affairs for cost sharing of these projects. The state legislature last year appropriated \$350,000 in severance tax bond funds to be expended for this purpose. Mr. Whipple commented that his understanding was that the Governor's budget is \$1.5 million for further expenditures in FY2001.

The other type of activities for recovery of the endangered fish revolves around the flow recommendations for the reach of the San Juan River below Farmington. Flow recommendations at Four Corners provide mimicry of the natural hydrograph which includes temporal variability, flow rates and volumes. The flows are deemed necessary by biologists to provide for endangered fish habitat needs. A second component of the flow recommendations is considered outside of the spring runoff period. The recommended base level for the San Juan from Farmington to Lake Powell is a low flow of 500-1,000 c.f.s. The idea is to keep flows in this range to maximize the low velocity habitats. The flow recommendations are the suggested operating criteria for Navajo Dam. The criteria relate spring release rates in volume to certain triggers based on water supply conditions and previous years' releases and current habitat conditions. The spring releases would be made with a peak release at 5,000 c.f.s. for 1-3 weeks. If necessary to meet spring storage target levels, instead of making water releases over the winter (as done in past years), the criteria called for making short duration spike releases from the reservoir in the fall.

Reclamation is preparing an EIS. The re-operation of Navajo Dam to meet the flow needs of endangered fish is a reasonable and prudent alternative for ESA compliance for water projects in the basin. The EIS is scheduled for completion in July 2002. Alternatives to be analyzed within the EIS are the consideration of a minimum release of 250 c.f.s. from Navajo Reservoir that may be sufficient to meet base flow requirements of the San Juan River below Farmington. Reclamation needs to collect data on the impacts of a 250 c.f.s. release during the summer period. They previously conducted a

winter-time low flow test, and those results cannot be extrapolated to summer conditions. Mr. Whipple reports that there is a concern that decreasing the minimal release to 250 c.f.s. may not provide sufficient access to water with existing diversions. The importance of this is that the lower the base release from Navajo Dam, the more storage in the reservoir that's available to meet the spring runoff statistics with the flow recommendations or water development needs such as supplies to Gallup and communities on the reservation. Mr. Whipple concluded by commenting that the completion of the Navajo Indian Irrigation Project and Gallup Water Supply Project and Rehabilitation of San Juan River Navajo Irrigation Projects are likely components of a settlement of the Navajo Nation water rights which is another large related issue.

Mr. Mutz added that the biological opinion for the Animas-La Plata Project, approved several years ago, requires the Reclamation to operate the Navajo Reservoir in conjunction with the Animas-La Plata Project to meet the endangered species needs.

In response to a question by Chairman Cheney about the proposed planting of Colorado Pike above Navajo Reservoir, Mr. Whipple responded that he had no knowledge of this. Chairman Cheney requested that staff follow up and that the ISC issue a letter objecting to the expansion of habitat. Mr. Whipple commented that he had heard news of the possibility of establishing an experimental population of Red-Tail Chub, a candidate species that previously inhabited the San Juan River both above and below the dam.

Commissioner Grant requested a two-page summary of Mr. Mutz' and Mr. Whipple's testimony.

DISCUSSION: Report on Pecos River and Rio Grande Water Operations in 2000 for Endangered Species Purposes and Effect on State Water Resources; Pecos River Compact and Rio Grande Compact Forecast of 2000 Delivery Credit or Debit

Mr. Gaume reported briefly on the deliveries relative to the Rio Grande Compact and the Pecos River Compact. He said the hydrology of the Pecos River in year 2000 was adverse for purposes of compact compliance, given the situation with deliveries through Avalon Dam. New Mexico is obligated under the Pecos compact to deliver approximately half of the flood inflows across the Texas state line. The largest component of the flood inflows is the release from Sumner Dam. Any time water is released from the dam, approximately half of that flow is obligated to be delivered by the State of New Mexico that same year across the Texas state line. The water has to flow down the Pecos River where it is partially depleted in route. It is diverted by Carlsbad Irrigation District (CID) and used for irrigation. There are approx. 50% return flows associated with CID diversions. In the event that Pecos River conveyance efficiency was perfect, that is, if there was no loss in transit, the return flows from CID would approximately satisfy New Mexico's obligations but Pecos River conveyance efficiencies are much less than perfect. Mr. Gaume emphasized that year 2000 was extremely dry and that the upstream reservoirs at Santa Rosa and Sumner were effectively emptied, with half the water owed across the state line. There were additional depletions in 2000 associated with maintenance of endangered species target flows at

Acme, although those depletions are small in comparison to the overall depletions on the river. Reclamation offset most but not all of those depletions.

Mr. Gaume reported that the result is bad. Preliminary ISC staff calculations indicate that the debit in 2000 will be about 14,000 a.f. This is a huge amount of water for the Pecos, Mr. Gaume suggested. The current accrued delivery credit is 22,900 a.f. The final accounting will be available in June when the river master makes his report. If the preliminary result is close, the net credit will be reduced to perhaps about 9,000 a.f. Mr. Gaume proposed that this is an undesirably thin margin for the State of New Mexico's compliance with the Supreme Court Decree.

Mr. Gaume reported on an additional aspect of the Pecos River operations for endangered species in year 2000 of substantial concern to ISC staff. CID recently reported that they are reluctant to enter into a lease with the ISC this year, based on their concern that they might enter into a lease under terms by which they might not be able to fulfill due to endangered species litigation. Mr. Gaume proposed that if the ISC is unable to negotiate a lease with CID, it is virtually certain that New Mexico will be in a net debit in its compact deliveries as of the finalization of the year 2001 accounting. That accounting would be available in the summer of 2002. Under the terms of the Supreme Court injunction, New Mexico would have to remedy that shortfall over the period from October 2002 through March 2003. That remedy would almost certainly entail some priority administration of the river as soon as 20 months from this date. Mr. Gaume reiterated that it is ISC staff's recommendation that ISC relax the lease terms to provide for relief of the CID Board's concerns, as staff understands them. Mr. Gaume has provided a draft motion for ISC consideration. The draft motion verbatim follows:

ISC staff is forecasting large predicted shortfalls in deliveries to Texas for calendar year 2000 under the Pecos River Compact and Decree. The Interstate Stream Commission accepts the staff assessment that there is a high probability, in the absence of a 2001 lease with Carlsbad Irrigation District, that the Pecos River deliveries to the Texas state line may be insufficient in 2001 to maintain a net delivery credit as required by the United States Supreme Court decree, thereby triggering priority administration in the Pecos River Basin.

Further, the Interstate Stream Commission recognizes the concern of the Carlsbad Irrigation District Board that the federal court presiding over the current Pecos River Endangered Species Act litigation might order water released from storage for endangered species purpose in 2001 and such an action might make the CID unable to meet obligations for state line delivery of water under a lease with the Interstate Stream Commission with the terms and conditions of previous leases.

Therefore, the Interstate Stream Commission directs the staff to:

1. Pursue the lease of all water from CID that the CID makes available for lease during 2001. The staff is authorized to lease all available

undelivered allotment water in addition to leases from fallowed acreage.

2. The staff is authorized to agree to lease terms that would provide for delivery of water and payment for delivered water following determination of irrigation allotments by the CID board, with the timing of the delivery at the discretion of the CID board. The Interstate Stream Commission recognizes that immediate delivery of leased water rather than holding it in storage will increase the possibility that it may lease water that in the event of large future rainfall events, could cause a spill of water from CID storage reservoirs.
3. Pay no more than \$50 per acre foot of water.

Commissioner Bulsterbaum moved to approve the above motion as drafted. Commissioner Grant seconded the motion.

In response to a question posed by Commissioner Martinez, Mr. Gaume responded that with the completion of the Willow Lake Water Rights Purchase and the placement of those rights in the conservation program, the permanent annual increases in state line flows will be about 8,600 a.f. per year. The Willow Lake acquisition provides about 1,800 a.f. of this total and is expected to be closed in 2001.

At the conclusion of the discussion, Chairman Cheney called for the vote, and the motion passed unanimously.

Mr. Gaume then summarized the situation on the Rio Grande (RG). He reported that last year was a very dry year on the RG as well. The flow of native water that passed the Otowi gage was less than 500,000 a.f.; 1,000,000 a.f. is average. The low Rio Grande flows of 2000 occur with a return frequency of about 3 years in 20, or about 15% of the time. 254,000 a.f. of San Juan- Chama Project water flowed passed the Otowi gage in 2000, which is a huge and historic record amount compared to the firm yield of the project of 96,200 a.f. Annual releases from Heron Reservoir are limited by law to that amount. A lot of water came out of reservoirs, mostly under the terms of the agreed order as a result of ESA mediation of litigation. Mr. Gaume said the bottom line is that with the low native water flows, New Mexico's obligation to deliver water to Elephant Butte was also fairly low. The result of the operations is a very large credit in New Mexico's deliveries to Elephant Butte Reservoir. The RG Compact Commission prepares the annual accounting, so that the figures reported below are ISC staff's preliminary estimates. Rio Grande Compact engineer advisers will meet for four days at the end of February to jointly prepare the accounting. New Mexico expects a record maximum accrued credit of approximately 270,000 a.f. After accounting for 20,000 a.f. of projected evaporation of New Mexico credit water in the credit pool at Elephant Butte Reservoir, staff projects an annual credit of approx. 100,000 a.f. Mr. Gaume said that this is a huge credit and reported that there have only been four years in history that has approached that magnitude of a credit.

Commissioner Engle suggested that as many commissioners as possible attend the March compact commission meeting.

PRESENTATION: Salt Water Cedar Removal and Revegetation with Native Plant Species at Bosque del Apache National Wildlife Refuge

Mr. Schmidt-Petersen introduced Mr. Paul Tatiana, a hydrologist with the U.S. Fish and Wildlife Service (USFWS) and manager of the Bosque Hydrology Group. The presentation, a photocopy of which was distributed at the meeting, focused on the issue of restoring non-native dominated forests to native-dominated forests. The conclusions of his presentation were as follows: (1) Without restoration, the Middle Rio Grande (MRG) will be a straight river lined with highly water consumptive phreatophytes (salt cedar and Russian Olive); (2) Physical river restoration and societal water needs should be viewed as being compatible with the MRG riparian ecosystem; (3) Techniques developed at Bosque Del Apache NWR for riparian restoration have shown great success; and, (4) There is a strong potential for net water salvage from the restoration of the Middle Rio Grande riparian forests.

In response to a question posed by Chairman Cheney on the methodology utilized to rid the river of phreatophytes, Mr. Tatiana responded that he could not speak for the USFWS and nor comment on protocol for surveys or removal of phreatophytes. He suggested that the use of herbicides would be a component.

Commissioner Grant asked for clarification of the estimated net savings of water. Mr. Tashjian responded that the result of phreatophyte removal could represent a savings of water of over 6,000 a.f. per year. Mr. Tashjian reported that Mr. John Taylor has tables of net results and costs per acre for the removal process and that a paper published by Mr. Taylor, reporting such statistics, can be obtained via the website bhg.fws.gov.

DISCUSSION: Review of Draft Final Middle Rio Grande Endangered Species Act Collaborative Program Agreement and Program Plan

Mr. Schmidt-Petersen provided an update on the ESA Collaborative Program to recover the silvery minnow within the middle valley of the Rio Grande. The draft Collaborative Program documents were provided in the meeting packet. Mr. Schmidt-Petersen reports that ISC staff is currently conducting a review of the draft documents to ensure that the 13 requirements of the December resolution of the Commission are met. This review will be provided to Secretary Turney and Mr. Gaume, who will then conduct a final review. Mr. Schmidt-Petersen encouraged the Commissioners to review the 54-page draft document and forward to him any concerns or suggestions they may have.

Mr. Gaume reported that at the December meeting, the ISC delegated authority to the Secretary to execute the agreement, subject to 13 conditions that were in the resolution and ratification of the final document by the Commission. After the final agreement is executed by the Secretary on behalf of the Commission, the Commission will have full opportunity to review and either ratify the Secretary's approval or request further changes.

Mr. Schmidt-Petersen reported that all the originally committed participants, plus participants enlisted since the inception of the effort, fully participated in the creation of the document.

Mr. Gaume concluded the report by reminding the Commission that the ISC provided the funding for extensive note taking services at each meeting and for facilitation. He reported that as the agreement was negotiated, a number of people wanted to guess at the total cost of the program and to provide those estimates in the document. He, instead, insisted that the participants not do this, but rather they provide the costs for the next two years. Mr. Gaume suggested that many people think that this is a \$100 million program.

Mr. Gaume recognized and expressed appreciation for the substantive and effective efforts of Mr. Schmidt-Petersen, Ms. Rhea Graham, and Steve Farris.

In response to a question posed by Commissioner Pattison, Mr. Schmidt-Petersen reported that the document does not contain flow recommendations per se. The document and the forecast associated with it are primarily intended to implement the priority tasks for the silvery minnow recovery plan. That plan contemplates a tremendous number of actions, and some of those are associated with understanding the needs of the habitat of the species, with regards to such things as river bottom substrate, flow velocities, general conditions during parts of the life stages, etc. A tremendous amount of information still needs to be collected to understand the needs of the species. This plan is intended to implement this data collection.

CONSIDERATION: Ranking of Proposals for Design and Preparation of Construction Bid Documents for Rio Grande Silvery Minnow Naturalized Breeding and Rearing Facility to be Located at the Albuquerque Aquarium; Delegation of Authority to Execute Agreement for Design and Construction Phase Services

Mr. Gaume informed the Commissioners of the procedure for the ranking of proposals and summarized the requested delegation of authority. The refugium concept was developed by Steve Carothers, who spoke at the December 7 meeting. This concept was developed and it became apparent that ISC should pursue it. In order to move from a concept to a facility, it is necessary to hire an engineer to prepare a design and documents that can be used to obtain construction bids and proceed with construction of the facility. New Mexico law is such that when a design of public works is required a specific engineering consultant selection procedure be used. This procedure requires that the agency issue a request for proposals soliciting qualifications-based proposals. The proposals are ranked by the agency. The governing body, in this case the ISC, needs to review and accept or change the ranking of the firms that submitted proposals. Negotiations are held with the most qualified firm. If the negotiations are successful, a contract is then entered into. If those negotiations are not successful they are terminated and negotiations commence with the second-ranked firm.

Mr. Schmidt-Petersen provided further details on the selection process. The result of the process is the following ranking of the three proposals submitted by (1) Fishpro, Inc. and Parsons Engineering Science (2) ASCG, Inc. and (3) Wilson & Co. and Aquatic Consultants, in that order.

Mr. Gaume then reported that the ISC should either accept or change the ranking of the three firms as determined by the selection committee. The second action requested is a delegation of authority to negotiate and execute a design agreement using the procedure that was described earlier.

Commissioner Grant moved to accept the following draft motion. The motion was seconded by Commissioner Pattison.

The Interstate Stream Commission director is delegated authority to negotiate and execute a design agreement with one of the qualified design engineers who responded to the Commission's RFP to design, prepare construction bid documents, and provide construction phase and start-up services for a naturalized breeding and rearing facility for the endangered Rio Grande silvery minnow to be located at the Albuquerque Aquarium site in cooperation with the City of Albuquerque. The Commission recognizes the current estimate of \$1.3 million dollars for the design and construction cost of the naturalized breeding and rearing facility. Funding for design shall be from the current year appropriation from the Improvement of the Rio Grande Income Fund. The director is instructed to provide the best efforts of the Commission's staff and consultants to expedite the implementation of this facility such that it is operational at the earliest possible date, currently estimated to be September 2001.

Mr. Darnell, Director of the City of Albuquerque Cultural Services Department, which includes the Albuquerque BioPark and Aquarium, and Holly Gasmann, Aquarium Manager, commented on the efficiency of this approach to dealing with species recovery. Mr. Darnell reported that the City of Albuquerque is very much in support of the project. The City participated in the evaluation of engineering design proposals for the refugium. The refugium will be located at the north end of the BioPark. It will not at this time be connected to the Aquarium, as it is a research facility. The hope is that later on, something can be developed to educate the public on species recovery. The facility will be accessible to the public on some basis to be determined by the biologists.

At the conclusion of the discussion, Chairman Cheney called for a vote to approve the selection of the Fishpro and Parsons team proposal. The motion carried unanimously.

Chairman Cheney clarified that the above-carried motion reflects the approval of the Commission for the delegation of authority to the ISC Director to negotiate and execute the design agreement.

CONSIDERATION: Delegation of Authority to Execute Joint Powers Agreement with City of Albuquerque Providing for the Design, Construction,

Ownership, and Operations of Rio Grande Silvery Minnow Naturalized Breeding and Rearing Facility to be Located at the Albuquerque Aquarium

Mr. Gaume briefed the Commission on the necessity for a delegation of authority to the Secretary to execute a Joint Power of Attorney agreement with the City of Albuquerque that would describe the roles and responsibilities of the ISC and of the City of Albuquerque for the design, construction, ownership, operation and maintenance of the refugium. A preliminary draft JPA is included in the meeting packet. Mr. Gaume stated that he anticipates its completion within a matter of days. The intention, he reported, of the JPA is that the ISC will provide all of the funds necessary for design and construction of the facility and for the initial year of operation. He reported that Mr. Darnell and Ms. Gassman have staff who are qualified to raise the silvery minnow in captivity, and they have agreed to provide that expertise, the site, and the water and water rights. Separate from this agreement, there will be another agreement between ISC and the Bureau of Reclamation. Mr. Gabaldon, Reclamation's former Albuquerque Area Manager, has committed to provide 50% of the costs under separate agreement. Mr. Gaume reported that if the Commission passed this delegation of authority, the ISC is committed to the entire \$1.5 million cost and is directing Mr. Gaume to seek another agreement that would provide for 50% reimbursement from Reclamation. Mr. Gaume shared that, given the low water supply, the refugium needs to be in operation as quickly as possible, and he is seeking reassurances from the City of Albuquerque that they will expedite the process.

Commissioner Pattison moved to approve the above-described delegation of authority. The motion was seconded by Commissioner Engle and passed without opposition.

CONSIDERATION: Set Future Meeting Dates and Other Business

Ute Reservoir. As representatives of the City of Logan were not present for the discussion, Commissioner Pattison requested that a discussion of the activities of the Ute Reservoir Oversight Committee be included in the next meeting's agenda. Chairman Cheney requested a copy of the ISC policy that creates the oversight committee to assist the ISC in dealing with Ute Reservoir management issues. Mr. Gaume stated that the agreement is published on the OSE website.

Future Meeting Date. No actual meeting date was set, however, it was agreed that a date should be selected in the middle of April 2001. Commissioner Bulsterbaum suggested that a meeting be held in Socorro, perhaps in June or July. Commissioner Grant proposed that the meetings should be held in different locations in the state.

DISCUSSION: Proposed Legislation and Status of OSE/ISC FY2002 Appropriation Request (continued from the morning session)

Secretary Turney summarized several newly introduced bills that might impact the OSE/ISC:

Senate Bill 473 requests \$220,000 from the General Fund to the Local Government Division to conduct economic and technical analysis of water usage as part of the Las Cruces-El Paso Sustainable Water Project. He reported that the OSE does not strongly support this due to ongoing litigation and the potential that El Paso will be able to use the information to develop this study against the State of New Mexico.

House Bill 467 requests \$71,000 appropriated from the General Fund to Local Government Division to support the Lea County Water Users Association development of ground water monitoring, assessment of deep aquifer audits, municipal water use and analysis of potential ground water storage and recovery options. Secretary Turney reported that this is for implementation of a part of the Lea County regional water plan that was approved by the Commission at its recent meeting in Albuquerque.

House Bill 474 requests \$6 million, appropriated from the General Fund to the Irrigation Works Construction Fund, to replace declining fund balances. Mr. Gaume reported that PVACD sought this bill with the intention that the money be segregated to be the continuous source for the re-loan program.

House Bill 542 requests \$150,000 for Tierra y Montes Soil and Water Conservation District to conduct hydrological assessment of ground water in San Miguel County. Secretary Turney reported that this, too, is related to regional water planning. Commissioner Grant expressed concern with bills that are related to but independent of the ISC's water planning activities.

Senate Bill 462. Secretary Turney read redirectly from a bill addressing interference with the exercise of a water right, and states that a transgressor shall be guilty of a misdemeanor.

House Bill 534 and Senate Bill 169. Mr. Gaume reported on the Water Finance Project Act that has been introduced. There are two versions, one introduced by Senator Lyons and the other by Representative Stell. This Act would create two trust funds, a Water Project Fund and a Water Trust Fund. The bills include a \$100 million appropriation, \$20 million of which would go to the Project Fund and \$80 million to the Trust Fund. Interest from the Trust Fund would be transferred to the Project Fund. Ultimate decisions would be made by the Legislature based on the recommended funding of projects by a board of 12 members chaired by the State Engineer. Four types of projects would be funded: (1) development of water supply infrastructure; (2) watershed management; (3) Endangered Species Act collaborative program projects; and, (4) flood protection. Mr. Gaume reported that in the OSE/ISC analysis of the bill states that all of the issues are those that the ISC deals actively with and that it is noteworthy that a bill to appropriate \$100 million for these purposes has widespread legislative support.

Budget and Program Performance Measures. Mr. Gaume reported that the LFC accepted the Governor's operating budget for the ISC with the exception of one line item that would provide \$500,000 for phreatophyte clearing. A consensus of a subcommittee of the House Appropriations and Finance Committee was to discuss this with the Chairman of the House Appropriations and Finance Committee, as there was

relatively strong support expressed by the subcommittee for adding this back into the ISC budget.

Mr. Gaume then reported that the Department of Finance and Administration (DFA) previously stated that they would recommend a \$7 million capital budget for ISC including funding for regional water planning and Ute Reservoir master plan preparation. The Governor's capital budget of \$2 million for the OSE/ISC eliminates funding for regional water planning and Ute Reservoir master planning.

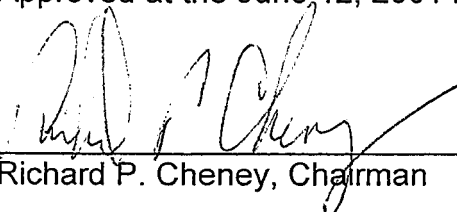
Three budget initiatives encouraged by the DFA (WATERS database, adjudications and environmental litigation) were funded in the Governor's budget at \$10 million. These are on a list of special appropriations. Separately, has agreed to sponsor bills to provide these appropriations. The environmental litigation bill would provide \$2 million to the ISC, and \$8 million would go to the OSE for WATERS and adjudications.

Mr. Gaume then reported on ISC program performance measures. One of the newly organized programs in the OSE is the Interstate Stream Compact Compliance Program and includes all the traditional duties of the ISC. The first seven performance measures (included in a handout distributed by Mr. Gaume) were recommended for adoption by the subcommittee of the House Appropriations and Finance Committee. The subcommittee inquired during their budget hearing as to why there were no performance measures for regional water planning, and ISC staff reported that there was no funding. The Subcommittee recommended that measures be submitted regardless, and ISC submitted three measures in response to their request.

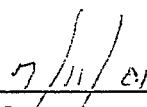
Commissioner Pattison moved to adjourn. Commissioner Houghtaling seconded the motion, and it passed without opposition. The meeting adjourned at 4:00 p.m.

Minutes were prepared by Lazlo Lazowska and edited by Norman Gaume.

Approved at the June 12, 2001 meeting of the Interstate Stream Commission



Richard P. Cheney, Chairman



Date