# MINUTES OF THE

# NEW MEXICO INTERSTATE STREAM COMMISSION

## January 12, 2005

The regular meeting of the State of New Mexico Interstate Stream Commission (ISC) was called to order on January 12, 2005, by Chairman Jim Dunlap at 9:15 a.m. at Exhibit Hall #2, Farmington Civic Center, 200 West Arrington, Farmington, New Mexico.

**Quorum of Members Present:**

Chairman Jim Dunlap
Julia Davis Stafford
Patricio Garcia
Phelps White
Buford Harris
Jim Wilcox
Secretary John D'Antonio

**OSE/ISC Staff Present:**

Director Estevan López
Bhasker Rao
John Whipple
Doug Murray
Rebecca King
Dan Rubin
D. L. Sanders
Tanya Trujillo
Ali Elhassan
Peter Burck
Alex Salazar
Sean Williams
Bob Genualdi

Commissioner Espinosa participated telephonically through Agenda Item #3.

**Absent:**

Blane Sanchez

**ISC Contractors:**

John Utton
M. Lee Pease
John Shomaker

**AGENDA ITEM #1 – COMMISSION CONVENES:**

Chairman Jim Dunlap convened the regular meeting of the Interstate Stream Commission at 9:15 a.m. Chairman Dunlap welcomed members of the public to the meeting.

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

Director López requested that Agenda Item #18 be removed from the agenda.

**Commissioner Stafford moved, Commissioner White seconded, to approve the meeting agenda as amended. The motion carried unanimously.**

## AGENDA ITEM #3 – ELECTION OF COMMISSION CHAIRMAN AND VICE CHAIRMAN:

**Commissioner Stafford moved that if the current Chairman Dunlap and Vice Chairman White were willing to continue serving that they be retained in those positions, Commissioner Wilcox seconded, to approve the motion.**

Chairman Dunlap and Vice Chairman White agreed to continue serving. Vice Chairman White pointed out that the statute does not provide for the election of a Vice Chairman. Chairman Dunlap commented that he felt a Vice Chairman was necessary.

**The motion carried unanimously.**

## AGENDA ITEM #4 – APPROVAL OF CONSENT AGENDA:

Vice Chairman White pointed out a typographical error on Page 7 of the minutes changing "PVAC" to "PVACD."

Director López pointed out a change to Page 14 regarding his comment that the Governor would support the Strategic Water Reserve bill be changed to "...that he probably would in concept, however not sure of the funding source."

**Commissioner Wilcox moved, Commissioner Stafford seconded, to approve the consent agenda as amended. The motion carried unanimously.**

## AGENDA ITEM #5 – SECRETARY REPORT:

### State-wide Mapping

There have been several meetings with the State Geologist of the New Mexico Bureau of Geology regarding supporting their mapping activities around the state. This work will help the State Engineer's office to be involved with selecting priorities for mapping and also fits in with the collaborative effort outlined in the State Water Plan.

### New Mexico Tech

The New Mexico Institute of Technology is planning to construct a Hydrologic Observatory collecting legacy data. It appears that they have an opportunity to get funding from the National Science Foundation in the order of $3 to $5 million per year. We believe this will afford the State Engineer's office the opportunity to cooperatively work with them on some modeling and studies efforts.

**Sandia Labs**

There is a possible cooperative study with Sandia Labs. They recently received some funding and we have scheduled a meeting with them to discuss potential sharing of some modeling efforts.

**New Mexico Geo-Spatial Research Center**

The State Engineer's office is the lead agency for that effort. It will be centralizing functions and for managing and maintaining and accessing geo-spatial resources that will create a center of expertise for GIS mapping needs that are required by all state agencies.

**Alamogordo Desalination Project**

The project was approved by me in December for about 3,000 acre-feet per year, the original application was for about 10,000 acre-feet per year but due to impairment issues it was cut back to 3,000. They can divert up to 4,500 acre-feet in any given year but on a five-year average they cannot take out more than 15,000 acre-feet. This project brings to light the new technology that is going after new water resources.

**Active Water Resource Management Initiative**

Considerable progress has been made with this initiative. We have re-established priority basins and the top three priority basins are the San Juan, the Lower Rio Grande and the Pecos. We have established some aggressive schedules to complete the basin specific rules and regulations in the Lower Rio Grande and the Pecos by the end of this calendar year to allow us to start actively managing the 2006 irrigation season. There will be a generous amount of time allotted for public comment in all the schedules for basin specific rules and regulations.

There has been a lawsuit filed by the Middle Rio Grande Conservancy District, Tri-state and New Mexico Mining Association contesting the general framework rules and regulations. We will be working to get the lawsuit dismissed. The basin specific rules and regulations is where water will be administered and not the general framework rules and regulations.

**Estancia Water**

There is a group in the Estancia Basin looking to provide water to the City of Santa Fe. We have not received an application yet. It has been characterized in the press as brackish water however it is water that has been used for agricultural purposes. We understand the application will be for a transfer from agricultural to municipal and industrial uses and not a new appropriation.

**State Land Office**

We have met with the people at the State Land Office looking for a cooperative working relationship with them in different areas. We are hoping that they will withdraw some of their comments on federal reserve rights that they filed in the San Juan Basin.

**Well Driller Regulations**

There was a hearing on these regulations this week in Santa Fe and other hearings are scheduled for surface water and groundwater rules and regulations for the next few months.

**La Plata Conservancy District**

We met with the district in an effort to brainstorm funding alternatives to assist with their capital costs for their portion of the ALP project.

**Dam Safety**

We are looking at a federal bill for funding in support of non-federal dams within the state. We think through that legislation New Mexico can receive about $5 million to rehabilitate New Mexico non-federal dams.

**Governor's Finance Council**

The Council has been active and there is a meeting and press conference today in Santa Fe where the Governor's recommendations will be announced on the capital outlay process. There are a lot of water projects involved. Invest New Mexico is one of the Governor's proposals that looks at water and wastewater projects and attempting to get some regional projects built.

**Questions from the Commissioners:**

Chairman Dunlap asked if there have been any meetings scheduled for Active Water Resource Management in the San Juan Basin.

Secretary D'Antonio responded that none have been scheduled yet but as one of the top three priority basins the meetings will be scheduled soon.

**AGENDA ITEM #6 – STAFF REPORT:**

The Director stated he wanted to add to the last comments of the Secretary regarding scheduling of Active Water Resource Management meetings. In the discussions of the schedules for the Lower Rio Grande and Pecos we included in those schedules ISC meetings in both of those basins and anticipate that as the schedule is developed for the San Juan Basin we would do the same thing. The ISC meetings will allow the Commission to take comments regarding the proposed regulations. Tentatively we are planning on an ISC meeting in Carlsbad in May and in Las Cruces in June.

**San Juan Basin**

Progress is being made with regard to the shortage sharing agreement. The staff of the various water using entities have been able to negotiate a proposed agreement and that agreement is now being considered by the principals.

**Gila**

We were successful, as reported in the last meeting, in terms of negotiating the Gila issues late last year and the Arizona Water Rights Settlement made it through the congressional process and was signed by the President in December. We are planning next week to begin some public meetings in the Gila Basin, in the Silver City area, to begin the dialogue amongst the various water users and ourselves to make sure that we get the planning process going and give plenty of time so that people may come to consensus on how we reap the benefits of the settlement.

**Pecos**

The previous estimate on the Pecos was that 2004 was the sixth largest year for flood flows and now I have been advised that it is the seventh largest. Nevertheless, all of the reservoirs have a lot of water in them, there is almost 100,000 acre-feet of conservation storage. An update of the state-line delivery projection shows that the most recent projection that I presented last month anticipated that we would be in a slight annual deficit. The revised numbers that we now have from the USGS show that we will have a very slight credit for 2004. Of course, the caution is that these numbers are based on provisional and estimated data through the end of 2004. We anticipate about a 1,200 acre-foot credit and that would add to the cumulative credit that we have of about 8,900 acre-feet so that we anticipate going into this year we will have about a 10,000 acre-foot cumulative credit. This was possible only as a result of having been

able to lease about 25,000 acre-feet. Without the lease we would have been in a substantial annual debit.

We will be reviewing today the first four contracts for the land and water rights acquisition program for the Commission's approval. Aside from that, we continue to make progress in terms of our negotiations with our land and water rights acquisition pursuant to the settlement. To date we have been able to negotiate about 3,360 acres in CID and about 6,300 acres in PVACD.

**ISC Accomplishments**

At the end of the year I was requested by the Governor to outline the principal accomplishments of the Commission. I believe the Commission completed a remarkable amount of important work in 2004 and some of that included:

**New Mexico's First State Water Plan**

Although most of the work on the plan was done in 2003, in fact the Commission adopted the plan in December 2003, it was presented to the Governor in 2004 and received his and the legislature's concurrence. That State Water Plan has proven to be a valuable document and we intend it to serve as the basis for the strategic plan for the Office of the State Engineer.

**Regional Water Plans**

Five new regional water plans were completed and accepted in 2004.

**Arizona Water Rights Settlement Act**

The Act was approved and signed by the President in December 2004. As a result New Mexico will receive at least $66 million for water related projects and that amount could go as high as $128 million. In addition, New Mexico will receive 14,000 acre-feet of water per year for use in New Mexico.

**Pecos Settlement**

We were able to resolve the objections to the Pecos Settlement. An appeal has been filed, but we are fairly confident that we will be able to proceed.

**Navajo Nation Water Rights Settlement**

The focus of the meeting today will be the Navajo settlement which was finalized in December 2004 and the revised documents were made available to the public on December 10th. The Navajo Nation took action to approve the settlement on December 29th.

**Elephant Butte Pilot Channel**

We have continued efforts on the Elephant Butte pilot channel excavation and maintenance. We estimate that in 2004 as a result of that work we were able to salvage between 15,000 and 20,000 acre-feet of water in the Rio Grande.

**Rio Grande Silvery Minnow Refugium**

The refugium won a national award and we continue to participate extensively in the Middle Rio Grande Endangered Species Act Collaborative Program.

**Shortage Sharing Agreement**

A cooperative shortage sharing agreement was reached amongst the water users of the San Juan Basin, both in 2003 and 2004. The 2004 agreement is serving as a starting point for an agreement in 2005.

**State of Texas Discussions**

We initiated, with the help of the Governor's office, discussions over water with the State of Texas, primarily focused on the Rio Grande, but on a broad range of issues.

**Eagle Nest Reservoir**

We were able to negotiate the terms of an agreement to settle litigation related to water supply in the Eagle Nest Reservoir.

**Relinquishment Agreement**

Although the agreement for the relinquishment of Rio Grande compact credit water to the State of Texas was reached in 2003 and the Emergency Drought Agreement was also done in 2003, had it not been for that agreement 2004 would have been undoubtedly a year of unprecedented water conflict on the Rio Grande. The fact that we were able to carry over some storage from those agreements helped us get through this last year and in fact is going to make some water available into 2005.

That is just a sampling of some of the work that the Commission accomplished in 2004. It is amazing how much important work was done by the Commission.

**Questions from the Commissioners:**

Vice Chairman White commented that the report to the Governor should include the establishment of a proactive relationship with the Ute Dam and Logan residents and in negotiating a future master plan for that area.

Director López responded that he would do that and reiterated that his report was by no means intended to be exhaustive of all the activity of the Commission but to highlight some of them.

Chairman Dunlap commented that on behalf of the Commission it was his belief that the credit should go to the staff of the Commission and the State Engineer's Office and the cooperative effort that they have put forth on these accomplishments. I am very pleased with the staff that you have put together and I think the State of New Mexico is well served.

**AGENDA ITEM #7 – PRESENTATION ON THE SAN JUAN RIVER BASIN IN NEW MEXICO NAVAJO NATION WATER RIGHTS SETTLEMENT AGREEMENT:**

Chairman Dunlap introduced the Commission's contract attorney Mr. John Utton and Mr. John Whipple of the Commission staff to explain the changes that have been made to the settlement agreement since the last time the documents were presented to the public.

Mr. Whipple stated that when the Commission was in Farmington in August 2004, they had presented a thorough review of the July 9, 2004, draft of the settlement agreement proposed between the State of New Mexico and the Navajo Nation. We went into detail on the elements of the proposed settlement agreement. We received further public comment on the July 9 draft and since that time the staff has continued to negotiate with representatives of the Navajo Nation and revisions to the July 9 draft were made largely in response to continued comment on the proposed settlement. The December 10 draft that was released last month incorporated six substantive changes to the July 9 draft. Those six are:

1. The proposed partial final decree that will define the rights of the Navajo Nation was split into two separate decrees. One is the partial final decree which would be submitted to the court with a request that it be entered after the Settlement Act passes Congress. That decree would define the rights of the Navajo Nation to use water from the San Juan River. A hydrographic survey will be conducted to quantify the rights of the Navajo Nation for uses in the ephemeral tributary areas, primarily in the Chaco Wash drainage, and once the hydrographic survey is completed a supplemental partial final decree would be submitted to the court to identify and quantify those water rights. In this way, the court can take up the issue and have the *inter se* process on the Nation's primary rights to divert water from the San Juan River at an earlier point in time than was originally envisioned.

2. We modified the language that described the waivers that the Navajo Nation would provide in relation to the Echo Ditch Decree rights. The July 9 draft included language that the Navajo Nation would not challenge rights adjudicated by the 1948 Echo Ditch Decree accept on the basis of forfeiture and abandonment since the entry of that decree. There was concern about the language of those waivers and we revised the language in response to public comments.

3. This change relates to the alternate water source provisions of the settlement agreement. We had negotiated an arrangement whereby when the direct flow is insufficient to meet all the direct flow rights on the San Juan River, the Navajo Nation would agree to provide up to 15,000 acre-feet of water in any one year out of their Navajo Indian Irrigation Project contract water from Navajo Reservoir for delivery to the Fruitland and Hogback projects in lieu of requesting other water uses to be curtailed in priority to get water to the latter two projects. There was a condition in the July 9 draft that required that this alternate water sourcing of the Fruitland and Hogback projects would only be provided so long as the water users in the Basin that were adjudicated rights under the Echo Ditch Decree did not get recognized more rights in the current San Juan River adjudication than they had under Echo Ditch Decree. This condition was consistent with what the Echo Ditch parties were insisting upon, that is, that the Navajo Nation would not challenge the Echo Ditch Decree rights except on the basis of forfeiture or abandonment. Nevertheless, there was concern over that condition being placed on the alternate water sourcing for Fruitland and Hogback, so the condition was removed in the December 10, 2004, draft and the amount was reduced from 15,000 to up to 12,000 acre-feet in any one year. The certainty of providing the alternate water supply to Fruitland and Hogback was increased, but the amount was decreased slightly.

4. The reserved municipal and industrial water supply rights of the Navajo Nation from the San Juan River were increased by a depletion of 300 acre-feet and a diversion of 600 acre-feet to reflect existing diversions for ore processing site reclamation near Shiprock. About 2,700 acre-feet of state water rights under license numbers 2472 , 2807 and 2875 that dealt with water for uranium ore processing and also for a helium plant at Shiprock that has been dismantled would be canceled.

5. In the July 9 draft the State of New Mexico was to provide $25 million over ten years contribution into a water development trust fund for the Navajo Nation to be matched by a federal appropriation of $25 million. The state funding contribution of $25 million in the latest draft has been shifted out of that trust fund and it would be provided as a non-federal cost share for the capital cost of the Navajo-Gallup Water Supply Project. That would be measured in 2004 dollars.

6. This was a major change that was made in response to concerns and requests from Senators Domenici and Bingaman, and that is that the authorizations that were in the July 9 draft for increasing the cost ceiling to complete the Navajo Indian Irrigation Project and for funding refurbishment of the existing project facilities was removed from the proposed settlement act. So the funding to complete NIIP would no longer be a condition of the settlement and instead the Navajo Nation would continue to pursue funding to complete NIIP on a separate track and under the existing authorization for the project.

Also, we have had several concerns raised by the City of Farmington in relation to their trust rights and the possible impact of the settlement with the Navajo Nation on the adjudication of their rights. So, in a related matter, the staffs of the State of New Mexico, the Navajo Nation and the City of Farmington are negotiating an agreement to address the city's concerns regarding adjudication of certain of its rights, including its trust rights, and if approved by the Farmington City Council the agreement would also provide the City of Farmington's support for the Navajo Nation Water Rights Settlement. My understanding is that the City Council could consider that agreement for approval as early as January 25th.

Mr. Whipple said that Mr. Utton would go over some of the reasons why the non-Navajo parties should support the settlement agreement.

Mr. Utton indicated that a document was available for members of the public on the table near the entrance entitled "Reasons to Support the Settlement." **[see attachment 2].** Mr. Utton said he would briefly go over the reasons as they relate to the settlement documents.

Mr. Utton stated that he wanted to make clear that the document does not summarize the benefits to the Navajo Nation. There are obviously substantial benefits to the Navajo Nation in the settlement agreement, and the Navajo Nation Council has had two special meetings in December to go over the benefits to the Nation and they have decided for themselves that this is a good deal for them. The Navajo Nation Council approved the settlement on December 29th. What we have focused on in this document is the reasons that other water users in the basin, particularly from the state's perspective and given the state's interests, should support this settlement. There are eighteen significant reasons that other parties should support the settlement and you could describe them as benefits to other parties. They are grouped into three categories, the first seven items are categorized under "Protection of Existing and Authorized Uses", the second category is "Agreements for Water Rights Adjudication and Administration", and the last category deals with "Water Development Pursuant to the Settlement." The first three items deal with essential elements of the Navajo Nation's water rights, the quantity and the priority.

- 1. Under the existing of uses of NIIP with sprinkler irrigation and under the provisions of the proposed settlement allowing for use of NIIP water for non-irrigation uses, we inserted a very important number of 353,000 acre-feet of diversion and we agreed on that number, which is 150,000 acre-feet less than the 508,000 acre-feet of water that was authorized for diversion by the project in the original 1962 legislation that authorized the NIIP. The Navajos have agreed that under current circumstances in order to market NIIP water or use NIIP water for purposes other than irrigation, any diversion under the NIIP rights in excess of 353,000 acre-feet per year, well below the 508,000 acre-feet per year, would require a permit from the State Engineer of New Mexico, and before that permit would be issued it would require demonstration of non-impairment to other water users.

- 2. The quantity of Navajo Nation water rights would fit within the supplies available to the State of New Mexico under its compact apportionment, and fits within those supplies available without displacing other users.

- 3. With the servicing of the NIIP and the Navajo-Gallup Water Supply Project from the Navajo Reservoir water supply, the two big projects that account for about 90% of the Navajos water rights that are being quantified would be administered with a 1955 priority rather than the very early 1868 priority that could be available to those water rights. That is a major feature of the settlement that other water users can look to provide significant protection.

- 4. The alternate water supply is one of the changes, and one of the big changes since the last draft was to remove a condition on the availability of that supply. There was a lot of concern that there were too many strings attached to the 12,000 acre-feet of alternate water supply that benefits non-Navajo water users above the Hogback and Fruitland projects. The settlement agreement now says that the water will be available, and the condition that was tied to adjudication of specific elements under or related to the Echo Ditch Decree was removed. So this water up to that amount will be available, and essentially will go to satisfy priority calls first and then would allow junior upstream diverters to continue to divert, in effect benefiting from that water in storage.

- 5. The settlement provides ALP protection if in fact the contractors in New Mexico receiving water from the Animas-La Plata Project do have a 1956 priority, which is one year junior to those reservoir priorities. They would get protection from reservoir water so that if there were a compact call or compact shortage, they would not be shorted first. The Animas-La Plata Project contractors would share shortages in the same percentages that the Navajo-Gallup Project would have shortages.

- 6. Quantifying or specifying the annual diversion amount required for the San Juan-Chama for shortage sharing purposes. I think that gives some clarity for the benefit of San Juan-Chama contractors as to the amount that will be used in the calculation formula for distributing water during years of shortages in the Navajo Reservoir water supply.

- 7. The settlement makes clear that the Navajo allottees are not bound by this settlement in any way. Their rights are not being infringed upon. But at the same time, it makes clear that if allottees are able to get large reserved future use claims, that the Navajo Nation's water quantities would cover that. That would not have to be absorbed by the rest of the basin. So in effect, it is an insurance policy. The settlement does not infringe upon the Navajo allottees, and their water rights will be adjudicated in due course like anyone else in the San Juan River Adjudication.

In the second category "Agreements for Water Rights Adjudication and Administration":

- 8. In the second draft that came out in July 2004, there was a provision that the Navajo Nation would not challenge Echo Ditch Decree rights except on the basis of forfeiture and abandonment, and that was requested by a lot of the direct flow diverters, particularly irrigators. That provision was further modified in the current draft to address additional concerns to try and make this provision clear and certain.

- 9. With respect to the Farmington rights, Mr. Jay Burnham, the City Attorney, is present and will probably comment on this. At the staff level we have been able to reach a recommended proposed agreement as to the City's trust rights and other of the City's water rights that the Navajo Nation would sign off on and hopefully that will be approved by the Farmington City Council at their meeting later this month.

- 10. A key provision of the settlement is that the Navajo Nation is agreeing that the water rights that are being adjudicated under this agreement would not be marketed out of state without New Mexico approval. Even if the other legal requirements that apply to out of state marketing were satisfied, for instance a State Engineer permit would have be obtained under Article 72-12-B, the State of New Mexico, acting through the Interstate Stream Commission, would also have to consent to any out of state marketing of Navajo water rights. So in addition to the laws that otherwise apply that deal with out of state marketing, as a contract matter within this agreement the Navajos are further agreeing that their contracting partner, the State of New Mexico, through the ISC, would have to consent and of course the ISC could withhold their consent if they felt that it was not an appropriate use of New Mexico water.

- 11. This item limits the groundwater impacts on the river. The agreement calls for the Navajos to have 2,000 acre-feet of groundwater depletions, and any amount over that causing depletions to the surface flows of the San Juan River have to be offset through a release of water or curtailment of uses under Navajo surface water rights to replace those effects. It also requires non-impairment of other well users.

- 12. The State Engineer will be the water master and would administer water rights in the basin. The State Engineer would have authority to make determinations of current beneficial uses, and authority over any changes in points of diversion and over any changes in purposes or places of use of Navajo water rights off of Navajo lands. The State Engineer will also be the official who would consider and approve offset or replacement plans under the groundwater pumping provisions. The division of the responsibility allows the Navajo Nation to administer water once it comes on to their lands for uses on those lands.

- 13. Certainly people from other basins who have been involved in a lot of these adjudications that have just gone on and on would appreciate the fact that this would hopefully avoid a lot of what some people would describe as misery in other basins where they for generations have been in these adjudications. Hopefully, by coming up with something that works for everybody we can avoid a lot of that litigation and the uncertainty that goes along with it and the costs. One thing that we want to point out is that this is an agreement where the Navajos, in exchange for giving up sizable claims, are doing so to get federal funds and some state funds to be applied toward wet water projects. The only new water in this settlement is the nearly 23,000 acre-feet for the Navajo-Gallup Project. That is a supply for a household domestic use that I believe a court would be hard pressed not to grant. So we believe that this is a reasonable negotiated conclusion to provide that water.

The last category deals with "Water Development":

- 14. One of the big items is the allowance under the proposed congressional legislation for marketing of water. The Navajo Nation would be able to market water under leases or subcontracts to others for use. Because of the provision that would prevent out of state marketing without New Mexico consent, that water would be available here in New Mexico.

- 15. The cost of the settlement has been reduced on the insistence of Senators Domenici and Bingaman. Almost $400 million was taken out of the settlement that would have been money for completing the Navajo Indian Irrigation Project. The total cost of the total settlement has been

brought down to about $750 million. That is a lot of money, but we are hopeful that the Congress will agree that is a good use of federal funds.

- 16. The Navajo-Gallup Water Supply Project is obviously going to provide benefits to Navajo residents who do not have sufficient local water supplies or who are even having to haul water. But in terms of benefits to non-Navajos, it certainly will provide water to the City of Gallup, which is in dire need of water and is greatly supporting this project. The infrastructure for that project over time could also provide many other benefits, including from the water treatment plant up by Kirkland for other non-Navajo water users.

- 17. There will be money in the settlement for the rehabilitation of the Fruitland and Hogback projects. That will make those projects more efficient and it should reduce their demand on the system, including their demand for water upstream from them. There is a specific provision in the settlement that would call for the cfs diversion rate for the Fruitland project to be re-visited after the rehabilitation has occurred, and there may be a reduction in that diversion from 100 cfs to 83 cfs as a result of the efficiencies obtained from the rehabilitation work.

- 18. In this day and age, especially in the Colorado River Basin where you have seven states vying for the same supply, I think it is to New Mexico's advantage to make use of its supplies and be able to demonstrate, and to point to that equity, that we are using our apportionment. The settlement gets us closer to fully developing our Upper Colorado River Basin Compact apportionment.

This is not an exhaustive list although it may seem like a long list. These are the primary items that we wanted to highlight and pull out of the 300 pages of settlement and related documents for your attention and also for the attention of the public so they can be rest assured that we have paid attention to their comments. Their comments have not just been filed away. We have studied them closely and there have been significant changes in the documents.

**Questions from the Commissioners:**

Vice Chairman White asked, regarding the item covering the Farmington rights, about the other communities in the region.

Mr. Utton responded that the communities have participated, but in the case of Farmington there was some particular questions about how their water rights would be adjudicated in the future and they did not want to wait to determine how that would happen. They wanted to get it done now. I do not believe the other communities had those kinds of questions and they have not stepped forward to raise them.

Chairman Dunlap asked Mr. Whipple about the item indicating that the quantity fits within New Mexico's apportionment. There are those of us that are concerned that when we get into this there will not be enough water to go around. What is the basis for what has been said here that the quantity fits within the apportionment.

Mr. Whipple responded that the Secretary of the Interior in 1989 approved a hydrologic determination by the Bureau of Reclamation completed in 1988 that indicated that the yield to the upper basin is at least 6.0 million acre-feet annually as measured at Lee Ferry. Since that time, the Upper Colorado River Commission has approved schedules of depletions in each of the upper division states with respect to their percentage share under Article III of the Upper Colorado River Basin Compact of that 6 million acre-feet. We have made minor adjustments to previously approved depletion schedules to incorporate this proposed settlement agreement. With those adjustments, we believe that we are still within our compact apportionment, and in fact, the Upper Colorado River Commission about two years ago by resolution not only approved the accounting of the use in New Mexico in the lower basin by the Navajo-Gallup Project under New Mexico's Upper Basin apportionment, but also resolved to support such congressional action as may be necessary to authorize the project. There have been only minor edits to the depletion schedule since that time and we feel we are within our apportionment. There is an analysis to that effect in the materials that were provided with the settlement agreement on our web site and in the packets sent to the Commissioners.

Chairman Dunlap asked Mr. Whipple when he expected that it would be normal for shortages to occur that would have to be replaced out of the Navajo Indian Irrigation Project, out of the 12,000 acre-feet of alternate water supply.

Mr. Whipple responded that usually the direct flow drops off at the end of the snowmelt run-off season. Looking at the historic record of inflows to Navajo Reservoir since 1962 and historic streamflows below the Navajo damsite prior to 1962, there will be times almost every other year, on average, during August, September and October when the direct flows would be insufficient to meet all the direct flow demands from the San Juan River under a full use scenario, including full use on the Fruitland and Hogback projects. If some of those direct flow demands, primarily at Fruitland and Hogback, were met out of releases from reservoir storage that were in excess of inflows to the reservoir then there would be sufficient water most of those years. It is during those periods that this alternate provision for a water source would go into effect. There are some years, however, when the direct flows go so low that even then there would be insufficient water to supply all the needs on the river without additional water being released from storage. That would be during the more severe droughts that you might expect to see a couple of years every 40 years or so.

Chairman Dunlap asked if Hogback and Fruitland, for instance, are at 50% of diversion usage on their farms right now, can they divert any more than anybody else per acre that they are beneficially irrigating, such that they would have to develop the remaining portion before they can actually divert their full allocation?

Mr. Whipple responded that any user in the San Juan River Basin is limited to the amount of water necessary to meet their current beneficial use demand. However, that is not necessarily a one-to-one ratio. For example, if you are only irrigating half of your acreage you still may need to divert more than half of your water right diversion because of carriage loss issues. But, yes, to the extent that they are not fully utilizing their rights, the Fruitland and Hogback Irrigation Projects under the settlement agreement are by and large treated similar to the other irrigation ditches. They have a farm delivery requirement and a diversion rate, and they will be subject to current beneficial use standards.

Chairman Dunlap commented that the Navajo allottees will be allowed to make claims for water through the courts, and then water to supply any rights awarded allottees for future use claims would be taken from or out of the water allotment for the Navajo tribal government.

Mr. Whipple responded that the Chairman's comment was accurate.

**AGENDA ITEM #8 – PUBLIC COMMENT ON THE SAN JUAN RIVER BASIN IN NEW MEXICO NAVAJO NATION WATER RIGHTS SETTLEMENT AGREEMENT:**

Chairman Dunlap invited the public in attendance to make comments in the order that they had signed in to address the Commission. The Chairman asked that the comments be restricted to the information, particularly the six changes, that were previously discussed by Mr. Whipple and Mr. Utton.

**Bob Rosebrough**

Mr. Rosebrough, the mayor of the City of Gallup, introduced members of his party from the City of Gallup. Mr. Rosebrough stated that it was a personal pleasure for him to return to his hometown to speak on this issue and to speak in favor of approval of this proposed settlement. This proposed settlement represents a crossroads and it is a crossroads that on one hand represents, in the form of the settlement, certainty, marketability of water that flows from that certainty, and the opportunity for this region to receive congressional appropriations that will benefit the region as a whole. On the other hand, the potential failure of the settlement would represent litigation, perhaps for decades, uncertainty and rather than money flowing into this region, extraordinary expense by all parties concerned in the region. The City of Gallup is not a signatory party to this agreement. We have an obvious interest in having the potential to receive water through the Navajo-Gallup Water Supply Project. When this agreement

was first announced in December of 2003 we hoped and anticipated in the City of Gallup that we would see a settlement approved in March of 2004. We were obviously concerned and disappointed that that did not occur. With the benefit of hindsight, I would be the first to say and state publicly, that we recognize the benefits of the delay in the process and the extended negotiations. We are pleased with the changes and concessions that have benefited both the San Juan County municipalities, our neighbors in San Juan County, and the irrigating interests in San Juan County as well. While this agreement clearly will benefit the Navajo Nation, we are very mindful and appreciative of the significant concessions made by the Nation over this extended period of negotiations. I had prepared some comments about Gallup's particular situation and participation in this and I will not get into those for the sake of time. My concluding remark would be to say that as an outside observer in this process, I have found the extended negotiations remarkable in terms of the good faith negotiations by the parties in taking into account the concerns of non-signatory parties and I frankly find the efforts of this Commission, its professional staff, and the efforts of the Navajo Water Resources Department, the Resources Committee of the Navajo Nation Council, and the Water Commission of the Navajo Nation, the word that comes to my mind is simply inspiring. I think it is an example of public service by all parties to this agreement and we recommend approval of this agreement by this Commission.

**Mark Edwards**

Mr. Edwards, a consultant with the City of Gallup, stated that he wanted to emphasize a couple of things that Mr. Utton had outlined. In my mind, and I think in most people's minds, the central mission of the ISC is to protect the waters of the State of New Mexico for use and development by New Mexico. If you look at items 10, 14 and 18 of the list that he provided for you, this agreement really goes to that central mission. There are many good things about this settlement and I wanted to re-emphasize that. The pressure grows every single year to take the barrier away from Lee Ferry and allow downstream marketing of Colorado River water. That pressure at some point may become unbearable in the next generation or two and this builds in another protection for New Mexico, and I wanted to re-emphasize that too because I think that is central to your mission. The second part of that, though, is it allows marketing by the Navajo Nation to communities, what Vice-President Dayish calls the Navajo suburbs, Farmington, Bloomfield and Gallup. It really benefits and establishes the foundation for economic development in this entire region. The third thing that I would say is it has been a long process that you have been engaged in and really sets the foundation for future negotiations with tribes in the Rio Grande.

**Jim Rogers**

Jim Rogers stated that he hoped his brief remarks would be directed toward the changes that were discussed earlier. I am an irrigator here in the basin and I am

also the Secretary of the San Juan County Agricultural Water Users Association. The views I will present to you are my own and also on behalf of our irrigation members. These members hold most of the senior water rights in this basin. We are a little hardheaded I guess. We continue to have the same concerns we've had all along. We feel that we have had little or no recognized voice in the preparation of this settlement. We asked as an association for one key concession that was the splitting of the priority dates for the direct diversion of the Hogback-Cudei Ditch. We believe that this concession would have had no harmful effects on any party to this settlement. We believe that this concession was never put forward as part of the settlement, mainly because it only benefited senior water right holders and not other water right holders. The Chairman alluded to the fact that these direct diversion ditches, the Fruitland and Hogback, do not divert all of the water that has been allowed for them at this time. I would like to point out that this settlement makes $24 million available to develop these ditches so that they can divert the maximum. The resulting maximum is 320 cfs that will be senior to any other existing water rights in this basin. If this 320 cfs is diverted on priority call, it is more water than is available in the rivers much of the time. We wonder if it is responsible for the State of New Mexico to enter into an agreement that allows such a scenario.

**Calvert Garcia**

Mr. Garcia introduced himself as the President of the Nageezi Chapter, which is located south of Bloomfield. The Nageezi Chapter is one of the 110 chapters on the Navajo Nation. Our community is interspersed with BLM management lands, state lands, private lands and Navajo allottees. Only half of my chapter has allottees. Also, we want you to know that we wholeheartedly support the Navajo water rights settlement agreement that was passed by the Tribal Council on December 29th. We feel as our Chapter that we need to, should there be other issues or questions about allottees rights, that we have access to the Tribal Council mainly to settle misunderstandings by a few individuals. So on behalf of my Nageezi Chapter we feel that we still need to further some communication with the Tribal Council and the Water Commission, not with the ISC. We really did not want to have any type of distraction with allottees in my community. We fully support the water rights settlement that was approved by the Tribal Council on December 29th, 2004.

**Jack Scott**

Mr. Scott introduced himself as a resident of Aztec, New Mexico, with water rights on the Animas and San Juan rivers, agricultural rights primarily. Again at this meeting, as I did at the last meeting, I question the adequacy of notice of this meeting. There apparently was never a formal notice of the meeting in the Farmington Daily Times and usually public bodies are required to give notice and have something other than a notice on the Internet. Mr. White raised the issue of other communities, all of these negotiations that have been going on have been

closed door, "star chamber" type negotiations not open to the public with basically no notice of what is going on. I doubt that the other two communities even know that there was an opportunity for negotiation because publicly the bodies here have stated that comment periods have been closed and only in these meetings has it been stated that input will be heard. The City of Aztec has major trust rights just like Farmington does that will probably be in jeopardy. I have raised before you before the rehabilitation of non-Navajo ditches. It is great that two Navajo ditches are getting the millions of dollars to do it, but I think I mentioned before also that about 20 years ago it was going to take over $200 million to rehabilitate the existing non-Navajo irrigation ditches and that price has only gone up. Going back to the negotiation with the City of Farmington, it is my understanding that as of last night that was the first time the City Council even knew that the City of Farmington was negotiating these issues. I would certainly hope that you read and understand not the summary, but the total documents before you vote on this. It will have far reaching ramifications on especially the non-Indian communities, the cities in San Juan County, and I don't think it is in the best interest of either the Navajo Nation or the non-Navajos on the river up here at this time to enter into this settlement agreement. The funding is ultimately going to be in question just as with the Navajo Indian Irrigation Project; 50 years and it is still not completed. Any time you depend on Congress to appropriate funding, it is not settled until the money is appropriated.

**Michael B. Sullivan**

Mr. Sullivan introduced himself as the President of the San Juan County Agricultural Water Users Association and as a Board member of the Hammond Conservancy District. The problem that we have, and I concur with Mr. Rogers' comments, is that we haven't been able to get to the table. I mean we have utilized every effort we had, we have met with the ISC in various meetings but when it came time for negotiation purposes we had no place at the table. So the issues that we had were not considered. I know Mr. Dunlap came to us and would talk to us about the issues, and I do not want to beat a "dead horse" because this is the same thing that we have been through. I feel like we have been effective and we have caused some change, but the one change that we needed we never got a concession on and that was the split priorities on the Hogback and the Cudei. I know that we visited with the Commission about it; we visited with various members of the tribe. I know George Arthur made the comment in the Bloomfield meeting, we had a meeting and you know he said we are known as the gorilla on the water block and we don't want to be that way. He said we want to be known as the jolly green giant, and I understand that and I appreciate that. At the meeting they swore up and down that would get back with us and they would have some meetings to discuss our needs versus their needs and it never happened. We never got a call from them to come back and talk to them. At the last ISC meeting we had here in Farmington, one of the Commission members sat here and said: 'Well, we'll be sure and get that third draft out in plenty of time.' They sat right there and told us that we would have

the third draft in plenty of time to discuss it, review it and go over it, and try to make some changes if we needed to make some changes. The first time that I have seen the bullet points, as they call them, was today to go over them. The thing about the agriculture water group, one of the things that we have been forced to do is utilize the adjudication process to be able to have an effect on the situation. We filed legal briefs through the courts, through the adjudication process and some of them we have been successful, some of them we haven't. But it has brought us to this point. And as I understand now, the judge in the adjudication has asked for a "show cause order" as to why the adjudication shouldn't be dismissed after 29 years of no action. Well you know the Association will have a chance one more time to have one more say in that, and that will be on the 18th when we file our briefs. So I mean it doesn't end here. We think this is a significant and historical event, but yet 15,000 irrigators and 36 ditches haven't been able to get to the table. So we will be at the table on the 18th again and we will be there to file briefs through the courts, and probably our position is that it shouldn't continue. It has been 29 years, you know we have asked that the irrigators be notified, there is nobody that has been notified. When they did the Jicarilla water rights settlement, not every one of us were notified. They did 6,000 notices and then a notice through the paper, and that is the way the courts decided to do it and that is fine we accept that. But we have a chance to make a change here. You know all we have asked is to be at the table. It never has happened; every time it has never happened. You know I hear from the City of Gallup that it is a good thing and it is great thing, it is a good thing for Nageezi. It's like I said before, its about power, politics and money. I know Mr. Whipple and Mr. Utton have made some significant changes in this and it is a lot better, but it still hasn't really impacted the needs of our Association. This one need that we have isn't something that just came up. That was the one issue in December 2003 when we met with the ISC that we asked for. We asked for it in December, we asked for it January, we went to the legislature with it. You know we went to the legislature twice, so I mean it is not that we haven't been involved. We have been involved, but we can't get to the table. I don't know what the Commission will do today, I know that this is an historical event, it is something that is going to happen, but I feel that for this agricultural community, that should be better and for all the parties to work together to make it better. We could do that, it could happen but everybody has to be at the table. I guess on the 18th we will see what the judge does and how everybody files their briefs, but I assume that this is a sub-file of the adjudication process. So if he throws the case out, you throw the baby out with the bath water. So you know that all we have asked for all along was to be a party and try to make it work.

**Jay Burnham**

Mr. Burnham introduced himself as the City Attorney for Farmington. He said he wanted very much to be able today to tell the Commission the official position of the City of Farmington regarding the Navajo water rights settlement, but it didn't happen. I do want to tell you though what we have been doing, it has already

been alluded to this morning. In July of last year shortly after the July 9 draft came out, the City of Farmington held two informational sessions conducted by the Mayor and the City Council of Farmington, and many of the people in this room attended those meetings. Then in August, the staff and Mr. Hudson, the City Manager, proposed to the City Council that we meet and enter into discussions with the State Engineer's office staff and ISC staff and representatives of the Navajo Nation to try to answer some of our questions in regard to the settlement and how it would effect the City of Farmington. Those discussions were conducted with the knowledge and consent of the Farmington City Council. At a staff level, it was soon determined by me and by the City Manager that in order for the staff to tell the City Council what effect this water rights settlement would have on the City, we would have to know the status of some of our rights that were alluded to earlier today, including what we call the City's trust rights. So those discussions evolved into a discussion of not only the settlement, but also a proposed consent order, or philosophy at least, as to how those rights would be handled by the State Engineer Office. Those discussions have just recently concluded and a proposed agreement, which again has been alluded to, has been prepared. We want to spend the next couple of weeks explaining in detail the proposed agreement to the City Council so that they will be able to vote on that agreement with an understanding of what would be covered in that agreement. If that agreement is approved by the City Council, one element would involve a formal process of supporting the Navajo water rights settlement. But of course I never, just as you would not want your staff to speak for you, I don't speak for the City Council. I do not know if that agreement will be approved. The agreement, as proposed, would include as an element in it the City of Farmington's support for the Navajo water rights settlement.

**Carroll Crawford**

Mr. Crawford, representing the Bloomfield Irrigation Ditch, said he would like to give his perception of the background of the agreement. I think that they have put to rest all water claims that have been forwarded. In rebuttal, I would have said I was descended from the Kennewick men 10,000 years ago. So I think those kinds of claims should be dismissed automatically. The Treaty of 1868 has essentially been ignored. Article 5 where it spells out what the Navajo needed to start irrigating. It doesn't mean that was the end of it, but I think it has been ignored. I think the Navajo land book has been obscured from public view and that is unfortunate. The Winter's Doctrine, an Act of Congress, does not override a treaty of a sovereign nation and we assume that the Navajo tribe is a sovereign nation. The Winter's Doctrine can be viewed and accepted, but it doesn't override that treaty. The Navajo borders the San Juan River in New Mexico approximately 45% of the border on either one or both sides. The other 55% is bordered by other entities. So the Navajo did get 56% of the water that flows through New Mexico. I think that is more than a fair settlement in the water and I do not particularly oppose that. I do want to give credit to the negotiating team for dropping some of the schemes to change our diversion from cfs to acre-feet

because that would have harmed the ditches and the rightful diversion that the Echo Ditch Decree established as cfs. They also did some other good changes as you put out in your list. I do still challenge the 1955 priority date that is used for combined rights for the NIIP and Gallup water. A combined permit is required to have the date of the combined permit and that should read 1958, and I would suggest you re-look at that too. See if Steve Reynolds and the other previous State Engineers were correct in requiring that. There has been an emphasis on the Navajo legal challenges to non-Navajo forfeited water, and I believe that was to strengthen the water availability in the future to make favorable marketing conditions for the settlement water and the prices that would result from that. It has forced the local ditches to gear up and establish water banks for their own protection. I would say that those local ditches need to continue that strategy. Also the Navajo water rights should not be expanded in the settlement, it should be limited to what are the settlement rights, how much water are they entitled to. Because of recent disclosures in some government documents, specifically in the draft Environmental Impact Statement on Navajo Reservoir operations, we have found that sometimes data is misrepresented or understated. In this case, our own Bloomfield Ditch was understated in the EIS, resulting in a conclusion that the 250 cfs minimum release rate from Navajo Dam would not be harmful to the Bloomfield Irrigation District, though we would only get roughly 54% of the water. For that reason, and since this is such a massive document, I do not know anybody that has had a chance to fully examine this document and review it for not only the good things it has done but to ensure our state law has been followed in all matters. Based on that I would recommend that the Commission postpone for a short while approval of the settlement for some Domenici tweaking to make sure that those that weren't at the table can have some say in what was done. Finally, I would like to encourage the State Engineer to ask the Governor to put in some money to get the hydrographic survey going because all these other entities have spent a massive amount of money trying to address these issues.

**Lorenzo Bates**

Mr. Bates, a farmer on the upper Fruitland Irrigation Project as well as the Navajo Nation Council delegate representing Upper Fruitland, said he would comment on several areas. With the passage of the settlement agreement, it begins the closure of 138 years of water flowing down the San Juan. It brings closure to decades of litigation, and in doing so, the Navajo Nation has in good faith, as well as you, made compromises. Some of those compromises include giving up our claim of 100% and taking 40% of our claim. This was a major compromise on behalf of the Navajo Nation. We also compromised on the amount of NIIP funding that would be included and we took that out. That does not say that we will not attempt to see that NIIP is completed in its entirety. We have compromised on Echo Ditch decreed rights. We are working with the City of Farmington on their rights. So the Navajo Nation has not only made compromises, but continues to work in good faith to achieve the settlement. The

settlement brings endless opportunity in terms of self-determination for the Navajo Nation simply because of the uses that we will now begin to use that water for rather than just for irrigation. We can now look at economic development in terms of industry and municipal uses. So, all in all, this may not be the perfect settlement, but it is there for all parties involved.

**Pete Ken Atcitty**

Mr. Atcitty introduced himself as a Council Delegate representing Shiprock and also representing community members of Shiprock. First of all, as far as the negotiations go, on the side of the Navajo Nation we feel that we have been part of the negotiations and all that was done in good faith. Basically, what we are looking at is that this settlement will create certainty. As one of my colleagues has just stated, we are looking at it as a way to improve many of the conditions on the Navajo Nation, and there is another issue that continues to surface. That is the issue of marketing. Well, I can say that right now, the Navajo Nation has more needs for water than trying to market, or even think about marketing, water at this time. I think, all in all, that this settlement is a beginning where we can all feel and establish a better working relationship with a lot of other entities, and can improve our government-to-government relationships with the cities and with the state and as well with the federal government. So overall, this is a positive thing that will be happening. As far as marketing goes, that is something the Nation is being criticized for. Well, my question is: Are those concerned that are also coming here before you really trying to set their water or are they looking at it as an opportunity for them to market water as well?

**Richard Wade**

Mr. Wade introduced himself as an attorney with DNA Peoples Legal Services. I have been retained by some allottees to represent them in this water settlement. I heard comments made with regard to the allottees earlier and I wanted to clarify some of those comments. The Commission had expressed at least one comment that they are not sure what some of the allottees had as a concern, and that apparently this was the first that the Commission had heard of allottees concerns. So I thought I would very briefly address those as well just for your information. First, I wanted to make the Commission aware that although various Chapters are represented within the Navajo Nation, you heard from one Chapter this morning that contains allottees, those Chapters do not speak with any official voice for the allottees. For that reason, you should be aware that although any Chapter official certainly can express an opinion and has allottees within the Chapter, they are not the voice of the allottees in this matter. Secondly, the allottees, at least the ones that I am representing which have views very much in sync with Shi Shii Keyah and the Allottees Association, both fairly large associations made up of allottees, have indicated that they are not necessarily opposed to the agreement. What they are opposed to is that they have not had a sufficient opportunity to really review the impact of the agreement on them. I

have heard this concern expressed by some of the other speakers here as well, both Navajo and non-Navajo. In particular, one of the questions that the Commission asked was: 'Well, if the allottees were to adjudicate water rights, wouldn't that come out of the Navajo Nation's share of water?' As the agreement sets right now, yes that is apparently how it is structured. The allottees have a concern about that. The allottees are members of the Navajo Nation, and to put them in a position of having to adjudicate their rights and then ultimately, if an adjudication were successful, to make their own Nation liable for whatever the adjudicated rights might be is a concern. That may be something that can be addressed, it may be something that has been addressed in the agreement. They simply do not have enough information at this point to really to be able to reach a conclusion. Also, the allottees have a concern in that it appeared that in the Gallup pipeline estimates that were made by the engineers, there were estimates made predicated on population growth in Gallup, as well there should be as you are looking at a 40-year agreement. It does not appear, at least on the face of the agreement, and this is a voluminous agreement that is very difficult to get through in a short period of time, it does not appear that any population growth estimates were made for either the Navajo Nation or the allottees. In fact, assumptions were made that historic water use would remain the same. This may or may not be completely accurate. At this point though, the allottees don't really know, and that is real concern because the Navajo Nation is one of the fastest growing populations in this general area. As a result of the oil exploration, additional roads have been put in, and that sort of thing also is growing. Then there is the question, and really this does not appear to have been addressed at all by the document, of what about the individual allottees whose land that these pipelines that are proposed will cross over. There seems to be an opinion that the Navajo Nation has that land. In fact, allottees have that land held in trust for them as individuals. It is in essence fee land held in trust by the Bureau of Indian Affairs. That means that when things happen to that allotment that affects the individual, that does not affect necessarily the Navajo Nation as a whole. At this point, no one has talked with the allottees, particularly those who would directly be effected by a pipeline crossing their allotments, about what kind of compensation they might get, how it might effect their way of life on those allotments, and anything else. Finally, just as a highlight point here regarding the pipeline that is proposed, it is suggested that water will be diverted to various Chapters and various entities within the Navajo Nation and a part is going to the City of Gallup. However, at least as far as the allottees have seen, there haven't been any real discussion as to how that water will come out of the pipeline, who would pay for it to get to an allottee, what priority of diversion there would be, or anything else that really would effect the allottees. So, in essence, the allottees have pretty much been left out of the equation. For that reason, the allottees, at least the ones that I represent, are asking not that the agreement necessarily be rejected at this point; they are asking for a stay in the decision of at least 30 days in order that some of these questions that I have raised and others that can be proposed to the Commission and to the individual parties can be addressed.

**Ervin Chavez**

Mr. Chavez said that he was present as an allottee and wanted to add to what Mr. Wade had presented. The comments that Mr. Wade made are right on target of what the concerns are. One of the things that we wanted to add to his comments were that this document really raises more questions than it does answers. One of the things that really bothers us when this went before our Navajo Nation government was that this document to not get any debate, zero debate. Only two people spoke on it, and there was a motion to cease debate and the Council voted on this document. The reason I bring that up is because I think a lot of the issues that the allottees are raising could have been addressed, could have been resolved in house, and probably could have been amended if our Navajo Nation Council could have debated this issue maybe for 5 or 6 hours and tweaked the settlement a little more. That is the one thing that really concerns us. The other thing is that the allottees are directly under the jurisdiction of the BIA, they are not under the Navajo Nation nor the state. This agreement, the way I read it, and I am not an attorney, but the way I understand it, it really confuses the jurisdictional issues. One of the documents that we got a hold of was a letter written by Navajo Nation President Joe Shirley that was dated August 22, 2003, to the BIA Regional Director that asked for input on behalf of the Navajo allottees. It was addressed which was addressed to Secretary D'Antonio, but I do not know if it was responded to and we would like to see the response if there was one.

**Questions from the Commissioners:**

Chairman Dunlap said there were some questions the Commission would like to ask of Mr. Utton and Mr. Whipple regarding the allottees and the split dates for the irrigators. I would like some explanation of what, if this settlement goes forward today, opportunity would they have to at least carry out some kind of a process that will obtain the results that possibly the courts or somebody else will agree with.

Commissioner Stafford asked that a discussion be added on the order to show cause in the whole context of this settlement and the ongoing adjudication.

Mr. Utton stated that he would be happy to respond and that he would be asking D. L. Sanders, the OSE General Counsel, to respond to Commissioner Stafford's request.

Mr. Utton responded that with respect to the allottee issue, that was a very delicate issue that we spent a lot of time thinking about. Really, the choice that we were faced with was whether to try and include the allottees in the settlement, and that would have delayed things for many, many years because as the representatives who have just spoken, including their attorney, have indicated they are not represented by the Navajo Nation. They are individuals and they

have individual rights just like other water rights holders in the basin. That would have meant expanding the negotiation far beyond what we were trying to undertake, which was already I think a momentous effort to try and do. What we felt was that the only way to go forward, with the insistence of the United States Solicitor's Office, who is the trustee for the allottees, was to provide explicit language in the documents that the water rights of the allottees are not being determined in these documents. They are not being affected in any way. So those agreements are in there and the legislation is going to also reflect that, and so what we were faced with if the Navajo Nation wanted to go forward with the quantities or amounts that were proposed in these documents, they had to provide that insurance coverage. So with respect to the comment that allottees might object to the Navajo Nation, as members of the Navajo Nation as opposed to allottees, that they might object to that, well I have two responses. One is, I think the state would not have been willing to quantify a large amount to the Navajo Nation without that, and the second thing is, that I just want to point out that the Navajo Nation itself has made that decision. Its governing body has made the decision. So if a member as a citizen of the Navajo Nation objects to that, I think that has already been considered.

Mr. Whipple commented that from a technical standpoint, he would like to make sure that it is understood that in the planning for the Navajo-Gallup Project, in the quantification for the water demand for the Navajo-Gallup Project, there were projections of increases in population within the entire service area of that project, and that includes these allotments. So the projected increases in population in those areas was in fact taken into account in the project planning and in the quantification that we have in the proposed settlement act and the settlement agreement. The allottees may later be adjudicated individual rights for those future growths, and yet they are supplied out of the Navajo-Gallup Water Supply Project and that is in the Navajo Nation water budget in the settlement. This again provides a reason why any future use rights that might be adjudicated to allottees would be serviced out of the Navajo Nation water budget.

Mr. Utton stated that, just to complete the answer to the allottee question, the allottees will proceed and have their day in court along with everyone else who is claiming a water right in the basin. There will be a hydrographic survey of their rights and they will have the opportunity to agree with that or oppose that, and if they oppose it to appear in court and to present evidence as to how their water rights should be quantified. They will receive probably more due process than they will ever want. This is going to take awhile and the way that the bargain was struck between the state and the Navajo Nation, with respect to any quantification of rights of allottees that are state-type rights, for example, stock wells and domestic wells, all those are going to be treated just like any other water user and they are going to be quantified. The insurance policy that we talked about only covers the possibility that an allottee might make a federal claim. That is probably not likely that there would be a big claim like that, but it is possible. We did not want to foreclose that. But if they succeeded in making a

federal reserve claim, a non-state based type claim, the Navajo Nation would step in and cover that, in effect. That is the agreement we reached that allowed us to move forward without delaying the agreement. It is not a question of delaying it 30 days. If we bring in the allottees, we are talking about years and years of delays. These documents went public more than a year ago and people a year ago were asking for 30 more days. We have now given more than a year, and we believe we have addressed these issues as much as we can between the signatory parties. We would like to get the approval of the decision makers and move forward.

On the issue of the split priority, that is the one issue that the agricultural water users have mentioned. There are a lot of other issues that they have raised initially that have been addressed. Mr. Crawford mentioned that a lot of the issues that the Bloomfield Irrigation District, in particular, has raised have addressed. So, there is this one issue, the split priority that is continuing to be raised. We could not get agreement on that for several reasons. The split priority is the idea that the Hogback Project should have a split priority: part of the project would have an 1868 priority and part would have a 1909 priority, which would correspond to about the time that they first started irrigating from the Hogback canal. The first problem with that proposal is that it is not based on federal law, and Indian rights are based on federal law. It doesn't matter that they started irrigating from the existing canal in the early 1900's. The Navajo Nation would not agree to a priority that is not based on federal law. What we did instead was the alternate water source provision, which really goes to the second problem with the split priority. Mr. Rogers mentioned that the split priority really is just a protection for very senior water users that would only protect water users with a pre-1909 priority. Well, what about all the other direct flow users that are post-1909, a lot of the towns, the power plants, other direct flow users. We felt we had an obligation not just to look out for just the most senior water users, but to look out for all those direct flow water users. So instead of going with the direct flow priority, we negotiated the alternate water source provision which provides 12,000 acre-feet of water for all direct flow users all the way up to the most junior to try and protect all of those people, including the towns, including the power plants, and including post-1909 irrigators. We believe that that water is going to provide a great deal of protection for those folks, and we felt that was a better solution and was best for the basin overall. That was what we went with and the Navajos agreed to it.

Mr. Sanders responded to the question about the judge's order to show cause as to why the San Juan adjudication should not be dismissed for failure to prosecute. I believe we have several legitimate responses. First, and foremost, it has been the philosophy of New Mexico government since about 2001 to increase our budget substantially to give us more staff; to not give us increases in our base budget, but to make those budget increases temporary in nature for specific adjudications. The legislature has chosen to make current appropriations for the lower Rio Grande and Pecos basins. It is our philosophy

and view that the technology that we have been able to develop and implement within the State Engineer Office will make our adjudications move more expeditiously. In fact, we have a pilot project up here on the La Plata River and the San Juan River adjudication that we believe will establish the baseline for future adjudications because we can use our satellite imagery, our GIS capabilities and our computer data bases to create the basis for an adjudication which we feel will move things more expeditiously. We have proposed that the court give us an opportunity to implement this over the next year. I would appreciate Judge Sanchez' order if it would light a fire on the legislature to give us maybe $100,000 more funding for that purpose. I have the ability to go the State Engineer and ask for more money, but it would be up to the State Engineer to discuss with the Governor if he felt it were appropriate. I don't mean to put that on his shoulders, but he is the Governor's appointee and not I in this office, and it would be up to him to discuss the cause for more funding. Quite frankly, I don't think that it is needed, particularly at this time, an extraordinary amount of money. I believe an additional staff member or two would be helpful, though. If we were able to get that, that would be great. I do believe we will be successful in concluding the adjudication in a more expeditious manner than our current plan calls for, but we do not want to be overly optimistic on when we can complete this. We will provide all of that to the judge and hope that he understands that there are real fiscal constraints on what we can do. We cannot be all things to all people at the same time. The judiciary is inflicted with that very same problem, they can never get the money they need to carry their case loads in a more efficient manner. I would like to stress several caveats concerning this. If this case were to be dismissed, which we will highly recommend that the court not do, I can only anticipate that the outcome would be that the Navajo Nation would seek the federal government to file suit in federal court. That has been the history of adjudications where they have been dismissed for failure to prosecute. If it goes to federal court, it has been the practice of the federal Department of Justice to seek that the federal court retain continuing jurisdiction, not just to adjudicate the rights, but continue oversight of the administration of that decree into the future. If the State Engineer is made the water master whereby he is then an officer of the court, it would present challenges to us with respect to conflicts in his statutory duties to carry out the constitutional provisions and other provisions of the water code. There is a potential for an obvious and inherent conflict. Any suggestion that dismissal of this case would eliminate any opportunity for the settlement to go forward I would say is clearly erroneous. It will go forward, I can't imagine the federal government not providing an opportunity for the Navajos to pursue this in federal court. Our feeling is that the judge will understand this, and we are confident that he will feel that adjudications and water law are a function of the state court.

Commissioner Stafford asked for an explanation of how the alternate water source provision would work.

Mr. Whipple responded that during times in late summer and in early fall, the natural flow of the river is too low to meet all the direct flow users demands on the system. Those are demands where people have a right to divert natural flows, as opposed to having a contract for water out of reservoir storage. Water that is in reservoir storage was put into storage at some earlier point in time when the storage right was in priority because of higher flows. So, when the flow of the Animas River gets low and the flow of the San Juan River gets low, there may not be enough direct flow in the rivers to supply all the direct flow users on the system. In this case, the Hogback Project on the San Juan River is at the bottom of the system, and the Hogback Project might start experiencing shortages. Administration of water rights under a priority system would require that if the Navajo Nation requested the State Engineer to enforce priorities so as to get water to Hogback, the State Engineer may be required to curtail other users' diversions so that water will flow downstream unused and be able to supply the Hogback Project demand. What we have provided for here is that at that time, the Navajo Nation, instead of requesting a priority call, would instead take water out of their Navajo Indian Irrigation Project contract which is for water from the Navajo Reservoir supply, stored water, and instead have stored water released down to the Hogback Project so that they can use the stored water on the Project. That is in lieu of requesting a priority call so that the non-Navajo users can continue to use water without being curtailed. In essence, the non-Navajo direct flow users would receive benefits of stored water without cost. As a practical matter, the amount of water needed in any year is going to fluctuate greatly. Some years you won't need any of this water supplied under this arrangement, other years you may need the full 12,000 acre-feet and maybe even more. This agreement does not prevent the Navajo Nation from providing even more at their option. But the agreement obligates them to provide up to the 12,000 acre-feet.

Chairman Dunlap asked Mr. Utton to sum up why this Commission should approve or disapprove this settlement agreement.

Mr. Utton responded that they have spent a lot of time over the last year trying to make this the best agreement that it can be from a negotiating standpoint. You do not get everything that you want in a negotiation, it is a compromise. I think that our analysis is that we have done as well or better in this negotiation than we would in litigation and it is a good compromise. I think as Mr. Bates said, it is a fair settlement for all involved, and that is what we set out to do, to try and achieve something that is equitable and can be administered. I think the timing is such, where the Navajo Nation has approved it and the 109th Congress is just started, that we need to have the state agree to that and pass this settlement on to the United States government to have Congress review this and hopefully approve it so that we can move forward. I think one of the things that Judge Sanchez is telling us is that we need to move forward. That is why he entered the order to show cause, to say: What are you guys doing to get this done? This is the key element in getting the adjudication moving forward. The state has

invested a lot of resources over the last few years to get to the point where we are now, and we have a lot of momentum. I think we have gotten to a good place, and it is time to make a decision so we can pass this on to our senators and congressional representatives so they can take a look at it.

**AGENDA ITEM #9 – COMMISSION ACTION REGARDING THE SAN JUAN RIVER BASIN IN NEW MEXICO NAVAJO NATION WATER RIGHTS SETTLEMENT AGREEMENT:**

**Commissioner Garcia moved to adopt the resolution of the New Mexico Interstate Stream Commission regarding the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement. Commissioner Stafford seconded the motion. The motion carried unanimously.**

Chairman Dunlap stated that the ISC has approved the Navajo Nation Water Rights Settlement Agreement between the State of New Mexico and the Navajo Nation.

**AGENDA ITEM #10 – LUNCH:**

The Commission recessed for lunch.

**AGENDA ITEM #11 – APPROVAL OF AMENDED UTE RESERVOIR USES OF ISC FEE LAND AND FLOWAGE EASEMENTS AND ENCROACHMENT POLICY :**

Mr. Murray stated that the ISC was requested in August 2004 to provide for economic development at the reservoir while at same time remaining cognizant of the water quality protection. This request came from some local developers and the Governor's Office.

Mr. Murray called the Commission's attention to the revised policy that was before them and explained the changes. **[see attachment 3]**

Mr. Murray reported that staff has been in close contact with the Ute Reservoir Committee on this subject and the Committee has met with the developers, the representatives from Quay County, Tucumcari and the Village of Logan. He stated he felt comfortable with the revised policy and that we retained the most important items such as no building below 3806, non-habitable structures which is critical and we also have maintained a fee structure that we feel is appropriate at the reservoir.

Chairman Dunlap asked if the Ute Committee has reviewed the proposed policy document.

Commissioner Wilcox responded that they had and that the Committee's recommendation is that the Commission adopt the policy.

**Commissioner Wilcox moved, Commissioner White seconded, to approve the amended Ute Reservoir Uses of ISC Fee Land and Flowage Easements and Encroachment Policy.**

Commissioner Stafford stated that at the beginning of this she had some concerns about the fill and build provision but that she understood the development issues that were behind it. Her particular issues were septic systems and construction that is not properly supervised or planned. The concern is that the main purpose of the construction of Ute Lake was the water supply and if that is the ISC primary responsibility to make sure that water supply and protection is maintained, how is the ISC going to properly police this development.

Commissioner Wilcox responded that with respect to the fill and build if you will notice under Section 3.a.i. of the policy that requires a professional engineer to design the development and sign off on it. It will be done right or you won't get a professional engineer to sign off on it. Secondly, with respect to protecting the water quality we are going after a master plan that is going to require some sort of a septic system other than septic tanks. So we are going to have some protection and I feel confident that is something that we can live with and protect the water quality.

Mr. Rubin responded to a question from Chairman Dunlap that there is no limit on the size of a project but as Commissioner Wilcox mentioned the question is what is feasible from an engineering perspective.

Chairman Dunlap stated that the engineer is going to sign off on compacting and rip rap and that kind of thing.

Ms. Trujillo commented that within the terms of the policy the Commission has to be satisfied that the fill and build permit does not impair safety operations or beneficial uses of the reservoir. We have built in several layers of protection that the Commission staff would have to sign off on for a project to be approved.

Chairman Dunlap responded that he had read that but it will be another bone of contention between the Commission and somebody that wants to do it and the staff says no that will jeopardize the safety, then you are going to be right back here making us determine if it is a safety issue or not. I think there ought to be a maximum per acre of fill and build to start with. I also think that on the purchasing of land between the 3806' and the 3787' that there ought to be a time limit, you ought to say that we will cease selling any of that land in five years or ten years or whatever. Let's take care of identifying the amount of land and the safety issues.

Commissioner Wilcox commented that he liked the Chairman's timeframe concept. I think that is something we could incorporate into this policy right away or maybe even right now. The aspect of dealing with a certain amount of acreage and a percentage of that acreage you are able to fill and build, I do not know how we would regulate that and how we would come up with some sort of a number. There are a lot of engineering concepts involved in that. That is something that would have to be thought out for a while.

Chairman Dunlap commented that he did not want to stop this today and that he wanted it to go forward. But if the Commission would agree to have you examine those two issues and we can amend this later.

Ms. Trujillo commented that she believed the Commission had two options. The Commission could act today contingent on clearing up these two issues that the Chairman raised or the Commission could do it through a formal amendment at a later date.

Chairman Dunlap responded that if the Ute Committee wants this to go forward and that they approve it, I would like to approve it as it is today and put it back on for review after staff has had time to examine the issues and amend it at that time.

Commissioner Wilcox proposed a motion to put a three-year timeframe on the policy.

Commissioner White asked, under the fill and build policy, are they required to use the fill that is presently in the lake, below the easement line, so that you are not filling the lake with the fill material.

Mr. Murray responded that the policy does not specifically address that because we do not know the engineering properties of those particular soils. The policy requires that an engineer to provide us plans and specifications for the fill and build. We do not have specific data on those soils and their structural properties.

Commissioner White said that his concern was that if you allowed them to use fill material from above the easement line, then you are actually filling the lake.

Chairman Dunlap stated that was his concern with respect to limiting the acreage, because if you put in 19' all around the lake you have severely damaged that flowage easement to the point that it is nonexistent. I would also be concerned about the drinking water if we inadvertently allowed fill material that eventually contaminates the water.

**Commissioner Wilcox stated that he would amend the motion to approve the policy contingent on the staff analyzing the issues of the length of time**

**to purchase the re-surveyed land, the amount of land that can be built on in any one acre, and the source of the fill dirt and bringing that information back to the Commission, Commissioner White seconded the motion.**

**The motion carried unanimously.**

**AGENDA ITEM #12 – DISCUSSION OF PROPOSED AMENDMENTS TO TERMS OF UTE RESERVOIR WATER CONTRACT:**

Mr. Murray stated that in March of 1997 the Ute Reservoir water contract was executed between the ISC and the Ute Reservoir Water Commission. Nine Eastern New Mexico communities and three counties comprise the Ute Reservoir Water Commission. The contract was for the option to purchase 24,000 acre-feet annually. The contract terminates on January 1, 2007 as to the portion of the purchase that has not been exercised. On November 11, 2004 the ISC Ute Committee members, Commissioners Wilcox and White, and ISC staff met with the Ute Reservoir Water Commission. There was a consensus to conditionally extend the option period that was reached in regards to the following items:

- Allow extension of the contract, i.e. option payments, pending the Eastern New Mexico Rural Water System Project authorization by the U.S. Congress prior to January 1, 2007.

- Two-year extension periods thereafter including Eastern New Mexico Rural Water Authority Project performance standards until December 31, 2012.

- No change in the option purchase for ISC O&M amounts in the contract, those amounts are a $1.50 per acre-foot for the option payment for the 24,000 acre-feet and $25.00 per acre-foot when they make the purchase.

- Extend 40-year contract term to extension periods, two years at a time.

- If authorization or other performance standards are not met, communities have a time period of one to three months to execute their purchase of the water.

- ISC O&M charge will be evaluated every five years as opposed to annually.

- ISC maintains the ability for annual water sale to third parties per current conditions.

According to the consensus that was reached, ISC staff, with the assistance of the Ute Committee, completed a draft-amended contract between the ISC and the Ute Reservoir Water Commission (URWC). However, because of the

performance standards provision, the ISC and the Eastern New Mexico Rural Water Authority (ENMRWA) seem to be the appropriate parties to the contract.

As a practical matter, the membership of the URWC and the ENMRWA are the same. Under this approach, the 1997 contract would be allowed to expire on December 31, 2006. Some communities may wish to execute the option to purchase with no harm to the other communities. The new contract between the ISC and the ENMRWA would be executed prior to January 1, 2007 so all the parties understand the conditions.

On December 20, 2004, ISC staff asked the URWC to consider this proposal. Staff will keep the ISC Ute Committee informed of any developments regarding this or other issues at Ute Reservoir.

Mr. Murray stated that there well be no formal request for Commission action on the contract at this time. He said that in a few months the amendments may be ready for Commission action to approve.

**Questions from the Commissioners:**

Commissioner Wilcox commented that the previous contract did not have any performance standards and this one will. If certain events do not occur, the Commission will not be obligated to furnish the water.

Commissioner White asked that Mr. Murray provide some basic information regarding the reservoir.

Mr. Murray responded that Ute Reservoir operates under the Canadian River Compact that is basically a storage compact. We are allowed to store 200,000 acre-feet of water, the conservation storage. Water exceeding that, then we are obligated to release to Texas. The water contract with the communities in Eastern New Mexico is for the permitted yield of 24,000 acre-feet annually.

Chairman Dunlap asked what the selling price of the water will be when the pipeline is in place.

Mr. Murray responded that according to the contract the price will be $25 per acre-foot plus an ISC O&M charge which has been determined to be $5.60 per acre-foot. The O&M charge will be re-evaluated every five years.

**AGENDA ITEM #13 – REQUEST FOR DELEGATION OF AUTHORITY TO THE DIRECTOR FOR AWARD OF CONTRACT UNDER RFP 2005-3 UTE RESERVOIR MASTER PLAN:**

Mr. Murray stated that an RFP was issued and we received six proposals. The Executive Committee is reviewing the proposals and we anticipate that the evaluation will be concluded in a week.

Chairman Dunlap asked what the dollar cost of the RFP was.

Mr. Murray responded that it is $400,000, and this in an estimate of the cost that ISC staff had developed. Mr. Murray stated that the RFP is for qualifications based proposals and the prospective contractors would not be submitting bids.

There ensued a discussion regarding the public participation process as part of the RFP. Director López stated that the staff has not gotten to the point of negotiating the number of public meetings and that will be a subsequent step after the award of the qualifications based proposals.

Chairman Dunlap expressed a concern with open-ended contracts and that we are going to have to start being aware of exactly what we are getting in a contract.

Director López stated that he felt the proposals will certainly have to demonstrate that the firms have the capability to carry out the public participation process. The step that we have not gotten to yet is to work with the proposing parties and actually negotiate the exact number of public meetings. That will be done as we work on finalizing the contract(s).

**Commissioner Stafford moved to delegate authority to the Director for award of the contract under RFP 2005-3, Commissioner Wilcox seconded, to approve the meeting agenda. The motion carried unanimously.**

**AGENDA ITEM #14 – REQUEST FOR DELEGATION OF AUTHORITY TO THE DIRECTOR TO ENTER INTO A LICENSE AGREEMENT WITH THE MRGCD FOR ACCESS TO AND ACROSS DISTRICT LANDS:**

Tanya Trujillo reported that this agenda item is a follow-up from the last Commission meeting where the Rio Grande Bureau presented to the Commission a proposed license agreement with the Middle Rio Grande Conservancy District relating to the Woody Debris Project as part of the Collaborative Program for the Rio Grande silvery minnow. At the December meeting the Commission tabled this item in order for staff to pursue further negotiation with MRGCD regarding the agreement. We were successful in negotiating an agreement with MRGCD that eliminated one of the main issues of concern from the Commission that was whether MRGCD was going to require the Commission to pay a fee for the license. They are no longer insisting that we pay a fee for the license, and we have otherwise worked through the areas of dispute with MRGCD regarding the agreement. We are requesting approval for delegation of authority to the Director to enter into the license agreement.

In addition, we have received a letter from Risk Management Division confirming that the ISC would be covered under the Tort Claims Act and a defense would be provided to the ISC in the event there were any allegations or tort claims brought against the ISC staff.

**Commissioner Stafford moved, Commissioner Garcia seconded, to approve agenda item #14. The motion carried unanimously.**

**AGENDA ITEM #15 - CLOSED SESSION--discussions regarding current and threatened litigation and the acquisition of real property and water rights in accordance with the Open Meetings Act, NMSA 1978, Chapter 10, Article 15, Section 1, Subsection H(7) and H(8) regarding Pecos and litigation case CV 2004-02066:**

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

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

The Commission met in executive session.

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

**AGENDA ITEM #16 – REQUEST FOR APPROVAL OF PECOS LAND/WATER RIGHTS PURCHASE CONTRACTS AND FOR APPROVAL OF PRICING GUIDELINES:**

Tanya Trujillo stated that the first item to be addressed would be the pricing guidelines. We are requesting the Commission to take formal action to confirm the pricing guidelines as presented on the pricing guideline sheet that is before the Commissioners. **[see attachment 4]**

**Commissioner White moved to confirm the pricing guidelines, Commissioner Stafford seconded, to approve the motion. The motion carried unanimously.**

Ms. Trujillo stated that the next item would be the Commission approval of four land and water rights purchase contracts.

Rebecca King stated that ISC staff and contractors have found that these contracts and the due diligence conducted on them have met the criteria of the ISC statutes and the settlement agreement and we therefore request that the Commission approve the purchase agreements to acquire land and the appurtenant water rights in the following amounts from the following individuals:

- Larry L. Waggoner and Katherine J. Waggoner for 156.3 acres within PVACD
- Philip Gary Troost and Deborah Troost for 234.9 acres in PVACD
- Juan H. Villa and Ignacia D. Villa for 95.09 acres in CID
- Herbert C. Bindel and Gytha P. Bindel for 124 acres in CID

We are also requesting that the Commission delegate authority to the Director, or his designee, to represent the Commission at closing proceedings for these agreements. These agreements and the amounts paid are within the ISC approved pricing guidelines.

**Questions from the Commission:**

Chairman Dunlap asked if the closings would be on February 21st.

Ms. King responded that is correct.

Chairman Dunlap stated that the Commission would first consider the purchase of the four properties.

**Commissioner White moved to approve the purchase of the four parcels of land as described, Commissioner Harris seconded, to approve the motion. The motion carried unanimously.**

Chairman Dunlap commented that with respect to the signing of these purchase agreements that there is a need for some publicity of the transactions in the Roswell and Carlsbad area. Accordingly, I would like to ask with the permission of the Commission that our Vice Chairman sign one at the PVACD and I will sign one at the same place and at the CID I would ask that Commissioner Wilcox sign one and I will sign the other. In the event that I will be unable to attend the

closings, Vice Chairman White will sign the two in PVACD and Commissioner Wilcox will sign the two in CID. I believe that publicity is necessary to let people know that the process is going forward.

**Commissioner Harris moved to approve the signatories of the agreements as described by the Chairman, Commissioner Wilcox seconded, to approve the motion. The motion carried unanimously.**

**AGENDA ITEM #17 – REQUEST FOR AUTHORIZATION FOR CONDEMNATION OF AUGMENTATION WELL TRACT AND FOR PIPELINE EASEMENT IN CONNECTION WITH PECOS SETTLEMENT:**

Ms. Trujillo reported that the Commission staff is requesting authorization to file a condemnation proceeding if necessary for augmentation well tract "G" and for a pipeline easement in connection with the Pecos settlement.

**Commissioner Wilcox moved to approve Agenda Item #17, Commissioner White seconded, to approve the motion. The motion carried unanimously.**

**AGENDA ITEM #18 – REQUEST FOR AUTHORIZATION TO ENTER INTO A SETTLEMENT AGREEMENT IN LION'S GATE WATER, WILLIAM TURNER, TRUSTEE V. THE NEW MEXICO INTERSTATE STREAM COMMISSION; JAMES DUNLAP AND JOHN D'ANTONIO, CV 2004-02066, SECOND JUDICIAL DISTRICT COURT, COUNTY OF BERNALILLO, STATE OF NEW MEXICO:**

Agenda Item #18 was deleted from the agenda.

**AGENDA ITEM #19 – SET FUTURE MEETING DATES, OTHER BUSINESS AND INFORMATIONAL ITEMS NOT REQUIRING ISC ACTION:**

**Commissioner Stafford moved, Commissioner Harris seconded, to meet on the 16th of February in Santa Fe. The motion carried unanimously.**

Director López reported that there are five Commissioners that had their terms expire on December 31, 2004. I am very pleased that the Governor saw fit to reappoint all of you and I believe this Commission is working very well together.

Chairman Dunlap affirmed the Director's words and stated that he also was very pleased with the performance of the members of the Commission.

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

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

OSE-2664

Approved at the _____, 2005 meeting of the Interstate Stream Commission.

Jim T. Dunlap, Chairman

2-16-05
Date

OSE-2665

# MINUTES OF THE

# NEW MEXICO INTERSTATE STREAM COMMISSION

## June 22, 2006

The regular meeting of the State of New Mexico Interstate Stream Commission (ISC) was called to order on June 22, 2006 by Chairman Jim Dunlap at 10:10 a.m. at the Rio Arriba County Complex, State Road 531, House #2A, Tierra Amarilla, New Mexico.

**Quorum of Members Present:**

Chairman Jim Dunlap
Vice Chairman Phelps White, III
Jim Wilcox
Secretary D'Antonio
Patricio Garcia
Judith Espinosa

**OSE/ISC Staff Present:**

Director Estevan López
Bruce Frederick
Elisa Simms
Adrian Oglesby
Sabrina Nieto
Beatriz Vigil
Ray Acosta
Craig Roepke
Coleman Smith
Mary Helen Follingstad
Karin Stangl
Ali Elhassan
Myron Armijo
Kevin Flanigan

**Absent:**

Julia Davis Stafford
Buford Harris
Blane Sanchez

**Eastern New Mexico Rural Water Authority Representatives:**

Scott Verhines
Brad Sumrall

**Other:**

Ute Lake Ranch Representatives
Brent Bullock - PVACD

OSE-2666