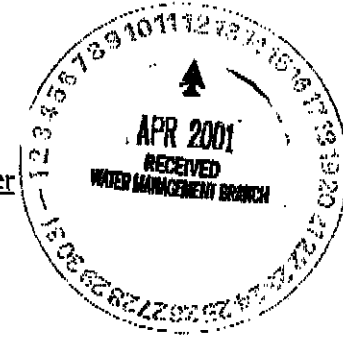
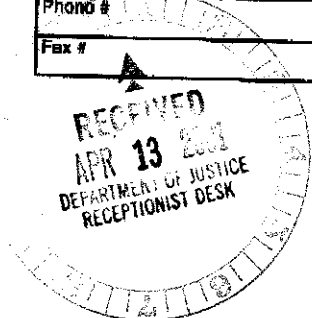




Post-It® Fax Note 7671		Date 4-15	# of pages 3
To STANLEY POLLACK	From JOHN L		
Co./Dept. DOJ	Co. NDWN		
Phone #	Phone #		
Fax #	Fax #		

Thomas C. Turney, P.E.
 New Mexico State Engineer
 P.O. Box 25102
 Santa Fe, NM 87504-5102



Re: San Juan Water Commission's Application to Appropriate Surface Water

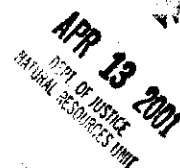
Dear Mr. Turney:

The San Juan Water Commission would like to supply some additional background information on its application to appropriate surface water in the San Juan Basin. The application is premised on the fact that the Animas-La Plata Project (ALP) has reached its ultimate size for New Mexico in terms of water allocations.

When President Clinton signed the bill on December 21, 2000, authorizing the scaled-down ALP, he also effectively deauthorized the larger project. Although our colleagues in Colorado, particularly the irrigators, may not see it that way, the Administration does. When David Hayes testified before the House Subcommittee on Water and Power on May 11, 2000, he said that the existing draft of the bill then should be amended to provide more clearly for deauthorization. He then suggested language to accomplish that purpose, and language was added to the legislation that passed. He also stated that the contemplated assignment of the Department's interest in Permit No. 2883 reinforced the deauthorization:

Finally, it should be noted that H.R. 3112 contemplates an assignment of the Department of the Interior's interest in the New Mexico water permit to fulfill the New Mexico purposes of ALP. In concert with the language we suggest above [on deauthorization], this provision helps to effectuate deauthorization of the scope of the original project in New Mexico.

David J. Hayes, Deputy Secretary of the Interior, before the House Resources Committee Subcommittee on Water and Power on H.R. 3112, May 11, 2000. Thus, the assignment of the permit, on which we have also asked your assistance, which you have agreed is necessary and proper, also indicates that a significant portion of the ALP has been deauthorized, particularly in New Mexico. It should be noted, however, that the legislation specifically states that the project facilities authorized will constitute the "Animas-La Plata Project." This is important to maintain New Mexico's position in the



Colorado River Basin and enable it to exercise its compact rights and share in the benefits of the Colorado River Storage Project Act.

The San Juan Water Commission, cognizant of New Mexico's need to develop its compact allocation, is now asking to appropriate the water released by the partial deauthorization of the ALP, so that it can equitably distribute the water to the communities in San Juan County. The Commission, as you know, is the agency charged in the San Juan Basin with acquiring and protecting raw water supplies for current and future municipal and domestic use. As such, it is the agency best positioned to appropriate this water.

When President Clinton signed the bill, the water became available for appropriation pursuant to the amendments to NMSA 1978, § 72-5-33, which you helped draft and lobby through the New Mexico Legislature in 1995. Under that section, water reserved for a federal reclamation project becomes available for appropriation by operation of law when the United States Congress determines that the project will not be built. As outlined above, the intent of the Congress, as reflected in the bill, is to deauthorize the original, larger ALP. President Clinton enacted that Congressional determination into law when he signed the legislation on December 21, 2000.

As you will further recall from the state law, the Commission, since it has a repayment contract with the Bureau of Reclamation, is given first preference to appropriate the water. This preference is dependent upon the water users applying to appropriate the water within one year of its release. This is one reason the Commission is applying now for the water. Also under that statute, the appropriation "shall be presumed to be consistent with the public welfare of the state and the conservation of water within the state." Thus, the only proof needed for the appropriation, as outlined under the typical appropriation statute, will be a showing of no impairment. Finally, the Commission, as a water user under a repayment contract, is entitled to appropriate the water under the priority date of the original notice to appropriate such water, which would be May 1, 1956.

Calculation of the amount of water applied for also is based, obviously, on the ALP and the portion of the project deauthorized. The original New Mexico Permit No. 2883 included diversions of 49,510 acre feet per year (AFY), and a consumptive use amount of 34,000 AFY. The amount requested in this application, 15,080 AFY consumptive use, is derived by subtracting from the original 34,000 AFY consumptive use amount, the uses authorized by the legislation just passed. The ultimate diversion amount, as is typically the case, will depend on the return flow plan you approve later. Our conservative calculations, based upon the pending return flow plan submitted to your office, show that diversions could be as large as 48,000 AFY. This number is "conservative" in the sense that it is the maximum we expect could be diverted under this permit. We wanted to be sure to give the public adequate notice of the potential diversion, so the number is on the high side.

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The application proposes to use existing diversion points to divert the water from the Animas and San Juan River, which will keep disruption of the status quo to a minimum. In addition, two new points of diversion are listed for possible storage sites in New Mexico. It would be some time before these diversion points are developed, but again, we wanted to give as much notice to the public as possible. The possible reservoir sites are in Cox Canyon and in Ditch Canyon. Both of these sites were studied in the Final EIS for the ALP, released in July 2000. While these sites were deemed inadequate for fulfilling the particular Indian water rights settlement purposes of the ALP and other reasons, they could be very useful for storage in New Mexico for municipal and domestic use. Again, we were conservative in estimating that storage with 24,000 AF capacity would be necessary to secure this water supply, and we anticipate refining that number in the future. The description of the diversion structures themselves for the possible reservoirs also is based on preliminary estimates. The application also proposed to use existing storage for these water rights, as available.

In addition to the typical purposes for an application of this type, we have added aquifer storage and recovery (ASR) as a purpose. The new statute allowing ASR, NMSA 1978, § 72-5A-1, *et seq.*, seems to offer a creative way for the communities in San Juan County to prepare for the inevitable dry years to come. We have preliminary information that some of the formations underlying San Juan County would be adequate for water storage, but of course that would be subject to compliance with the new statutes and the comprehensive regulations governing ASR.

The application also requests authority to divert water from the upper San Juan and the La Plata by exchange on the Animas, as is permitted in other instances in the basin. The exchanges, of course, as well as all operations under the permit, would be designed to avoid impairment or detriment to any existing senior water rights.

Now that the seemingly endless task of getting approval for APL is over in the Congress, the time has come for the San Juan Water Commission to broaden its tasks to accomplish its mission of providing water for the future in San Juan County. Tom, this application is an important step in that process, and we welcome your input and assistance in this endeavor. Please let us know how we can better position this application to serve the interests of all of New Mexico and San Juan County.

Sincerely,


L. Randy Kirkpatrick
Executive Director, SJWC

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APPLICATION FOR PERMIT
To Appropriate the Public Surface Waters of the State of New Mexico

Pursuant to NMSA § 72-5-33



Book and Page No. _____ File No. _____

1. Date of receipt of application _____
2. Name of Applicant San Juan Water Commission
 Mailing Address 800 Municipal Drive
 City and State Farmington, New Mexico Zip Code 87401
 County of San Juan State of New Mexico
3. Name of Applicant Principal
San Juan Water Commission
L. Randy Kirkpatrick
Executive Director
800 Municipal Drive
Farmington, N.M. 87401
4. Quantity of water applied for 15,080 acre feet per annum (consumptive use);
 (a) by direct diversion up to 48,000 acre feet, upon acceptance of a return flow plan by the State Engineer; (b) by storage 7,452.77 acre-feet of existing storage and up to 24,000 acre feet of proposed storage;
 (b) Storage amount shown of 7,452.77 acre feet above is existing storage permitted by the State Engineer as shown in Permit No. 4498. The 24,000 acre-feet is proposed storage for this application. See additional information under Item 12, Capacities of storage reservoirs.
5. Period of annual use January 1 to December 31
6. Source of water supply: (a) name of stream or water course San Juan, Animas and La Plata Rivers,
 (b) which is a tributary of the Colorado River
 (c) or is situated in Section _____ Township _____, Range _____
See additional information under Item 13, Source of water pursuant to NMSA §72-5-33.
7. Location of points of diversion or outlet from channel reservoir storage: (a) See Attachment "A" 1/4 of Section _____, Township _____, Range _____, N.M.P.M. at a point whence the _____ of Section _____, Township _____, Range _____, bears _____ feet distant. (b) X = _____ feet, Y = _____ feet, N.M. Coordinate System _____ Zone within the _____ Grant.
8. To be used for: Municipal and Industrial purposes including but not limited to the following: domestic, lawn and garden watering, evaporation, lease, industrial electric power generation, livestock watering, recreation, fire reserve, surface irrigation of parks, water production losses, aquifer storage and recovery and other related purposes.

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9. Area to which water is to be beneficially used:

Subdivision	Section	Township	Range	Acres
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Within the service areas of the member entities of the San Juan Water Commission, as they exist today or may exist within the future, including the

City of Aztec, City of Bloomfield, City of Farmington, and the existing service areas of member entities of the San Juan Rural Water User Association. See Attachment "B" for descriptions of areas to which water will be beneficially used by Water User Associations. Also attached is a map showing existing service areas of Cities and Water User Associations.

10. Describe diversion works, stating construction materials, character of foundation, dimensions, etc.
See Attachment "C" for description of existing diversion works. Diversions for storage to reservoirs will consist of low-profile riprap diversion dams and gated, concrete turnout structures from the Animas River. The turnouts will direct flow to concrete pump stations to deliver water to the reservoirs.
11. Capacities of storage reservoirs:
See Attachment "D" for description of existing capacities of storage reservoirs. The Commission also is giving notice that it plans to secure up to 24,000 acre feet of additional storage in New Mexico to secure this water supply. Two potential sites are in Cox Canyon and in Ditch Canyon.
12. Additional data or explanations

Water use will not be exercised to the detriment or impairment of any others having prior and existing rights to the use of water of the Animas River, San Juan River or La Plata River.

Source of water pursuant to NMSA § 72-5-33. The water to be appropriated under this application was permitted to the Bureau of Reclamation, Department of Interior (BOR), for perpetual use in New Mexico by the beneficiaries of the Animas-La Plata Project, in Permit No. 2883. This water, 15,080 AFY of consumptive use water, has been returned to the State of New Mexico by operation of law pursuant to NMSA § 72-5-33, which provides for return of the water to the public, and available for appropriation, if the United States Congress determines "that the planned federal reclamation project will not be constructed." By its passage of U.S. Senate Bill 2508, which was signed into law by President Clinton around December 21, 2000, the Congress determined that additional features of the Animas-La Plata Project originally authorized under the Colorado River Basin Project Act of 1968 (P.L. 90-537) will not be built without further express authorization from Congress. See §2(a)(1)(C)(i) of Senate Bill 2508. This is a determination that a severable portion of a planned federal reclamation project will not be constructed, and under NMSA 1978, § 72-5-33(A)(2), the water became available. The Administration also stated that this language would act as a "clear deauthorization" of the original project in New Mexico. See Statement of David J. Hayes, Deputy Secretary of the Interior, Before the House Resources Committee, Subcommittee on Water and Power on H.R. 3112, May 11, 2000, at p. 8. The amount of water available, 15,080 AFY consumptive use (CU), is determined by subtracting from the original depletion amount for the ALP, 34,000 AFY CU, the amounts allocated to participants in the ALP. The remaining amount of depletions, 15,080 AFY CU, may be appropriated pursuant to the provisions in § 72-5-33(B) of the statute. Under this section, the State Engineer is required to give first preference to water users such as the San Juan Water Commission, which has a repayment contract with the United States. In order to receive this preference, the application must be filed within one year of the release of the water, and that condition is being met with the filing of this application. Further, the appropriation requested by this application, pursuant to § 72-5-33(B)(2), is presumed to be consistent with the public welfare of the state and the conservation of water within the state. Further, under § 72-5-33(B)(3), the appropriation under this application shall bear the priority date of the original notice to appropriate such water, which is May 1, 1956. The applicant SJWC is applying to appropriate this water with a May 1, 1956, priority date to benefit the citizens of San Juan County.

Pursuant to the Joint Powers Agreement (JPA), dated March 5, 1986, the SJWC's mission is to acquire untreated water for the use and benefit of all the citizens, municipalities, water users associations and the other water users in San Juan County, N.M. These beneficial users are represented on the SJWC by its member entities. The

beneficial users under this application are the City of Aztec, the City of Bloomfield, the City of Farmington, and the San Juan Rural Water User Association. As provided in Paragraph IX of the JPA, in the event of dissolution of the Commission or the termination of the JPA, the City of Aztec, the City of Farmington, the City of Bloomfield, and the County as trustee for the San Juan Rural Water User Association shall have the absolute right to obtain their pro-rata share of water under this application.

The San Juan Water Commission will hold the water rights described in this application until such time any Joint Powers Agreement signatory party demonstrates the need for a portion of this water. At such time, the Commission shall notify the State Engineer of the entity to whom the water will be allocated, the quantity of water to be diverted, the point(s) of diversion, and period of use. The entity will then become responsible for compliance with all lawful conditions imposed by the State Engineer relating to the approval of this application. Such an allocation will not require public notice unless it results in a change in the place or purpose of use, or point of diversion not included in Attachment A to this application.

Any future modification of works necessary to accommodate surface releases under this permit will be constructed, operated, and maintained so as to not impair or be detrimental to any other prior and existing right. At the time of proposed modification, proper application will be made to the State Engineer.

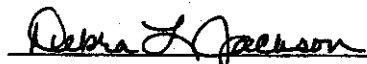
This permit would allow direct diversions from the San Juan River below its confluence with the Animas, as well as from the Animas and La Plata Rivers. In addition to these direct diversions from the San Juan, the Animas and the La Plata, the Commission may allocate water to an entity whose water sources is diverted from the San Juan River above the confluence of the San Juan River and the Animas River located in Section 20, R 13 W, T 29 N, N.M.P.M. The water diverted from the San Juan above its confluence with the Animas or from the La Plata will be offset by water releases into the San Juan River or by other means satisfactory to the State Engineer. It is anticipated that the State Engineer will direct diversion of this water only to the extent that the diversion will not cause impairment of, or reduction in, the amount of San Juan River water available to valid existing rights or to any Navajo Reservoir contract water being delivered via the San Juan River.

The Commission may allocate water to an entity whose water source is a shallow well in the river bed alluvium located immediately adjacent to the river. Water from this well will be offset by water releases from this permit or by other means satisfactory to the State Engineer.

I, L. Randy Kirkpatrick, affirm that the foregoing statements are true to the best of my knowledge and belief and that I am the Executive Director of the San Juan Water Commission. (sole, partial, agent for, etc.)



San Juan Water Commission, Applicant and holder of the right to water for beneficial use.



Subscribed and sworn to before me this 16th day of JANUARY, A.D., 2001. My commission expires 8-14-2004.

Notary Public

OFFICE OF
STATE ENGINEER
SANTA FE, NEW MEXICO
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List of Attachments

Attachment A – Existing and proposed points of diversion

Attachment B – Areas to which water will be beneficially applied

Attachment C – Description of existing diversion works

Attachment D – Capacity of existing and proposed storage reservoirs

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