

REP  
4

**Rubin, Dan R., OSE**

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From: John Romero [John Romero /seo,state,nm,us]  
Sent: Monday, April 25, 2005 12:28 PM  
To: gridgley; jromero; Jim Sizemore  
Cc: rgenualdi  
Subject: RE: SEO Position on SJWC Applications

Jim, I think the letter states what the OSE requires, as a minimum, on an application to administer. We (OSE) need to settle in on a unified position and go with it. I think we need to require what is needed for the Water Rights Division to Administer the permit regardless of who the entity is. When do they want to meet and where? John R.

-----Original Message-----

From: Jim Sizemore  
Sent: Monday, April 25, 2005 12:00 PM  
To: gridgley; jromero  
Cc: rgenualdi  
Subject: SEO Position on SJWC Applications

Hi Greg - John,  
Robert tells me the Commission wants to meet with us again - prior to us issuing a letter stating our position on their applications. This time, the big guns want to meet with us.

Have you had time to look over my draft letter - enough so we can agree internally on our position?

Thx,  
Jim



ELEVENTH JUDICIAL DISTRICT COURT  
COUNTY OF SAN JUAN  
STATE OF NEW MEXICO

'92 NOV 23 AM 9 41  
STATE ENGINEER OFFICE  
SANTA FE NEW MEXICO

MARGARET B. MATHERS and  
BETTY R. HUNT,

Plaintiffs,

vs.

SAN JUAN COUNTY, DANNY CARPENTER,  
SHERRY GALLOWAY, DONALD BENALLY,  
B. J. BAGGETT, and DOES 1 - 15.

Defendants.

No. CV 89-875-801

IN RE THE JUDICIAL EXAMINATION,  
APPROVAL, AND CONFIRMATION OF THE  
CONTRACTS BETWEEN THE UNITED  
STATES BUREAU OF RECLAMATION AND  
THE SAN JUAN WATER COMMISSION FOR  
THE PURCHASE OF WATER DATED JUNE 30,  
1986 AND JANUARY 8, 1990.

SAN JUAN WATER COMMISSION,

Petitioner,

vs.

THE TAXPAYERS AND WATER USERS  
OF SAN JUAN COUNTY AND UNKNOWN  
CLAIMANTS IN INTEREST,

Respondents.

No. CV 90-95-3  
(CONSOLIDATED)

DECISION OF THE COURT  
ON MOTIONS FOR SUMMARY JUDGMENT

This matter came before the Court on January 9, 1991 for  
hearing on various motions, including petitioner's Motion for

Summary Judgment and respondent's Motion for Summary Judgment. For purposes of this Decision, the Court incorporates by reference its Partial Decision of the Court, filed herein on May 6, 1991, including its Findings of Fact and Conclusions of Law.

Subsequent to the May 6, 1991 Partial Decision, petitioner dismissed all non-responding taxpayers and water users of San Juan County, as parties to this lawsuit. Respondent thereafter sought joinder of those same parties. By order filed July 29, 1991, the Court denied Respondents' Motion for Joinder of Persons Needed for Just Adjudication. That order is also incorporated herein by reference.

This case is now ripe for summary judgment. Both parties have requested this relief, and neither has provided any evidence or documentation which would indicate that there are any genuine issues of material fact. Respondents' argument that if summary judgment is not granted in their favor there are issues of fact concerning the availability of sufficient water to fulfill the consideration set out in the contract is not substantiated by any showing of material fact, and is not relevant to the issues before the Court.

For purposes of this motion, the following facts are not in dispute.

1. On March 5, 1986, San Juan County, the San Juan Rural Water Users Association ("Water Users"), and the municipalities of Aztec, Bloomfield and Farmington (collectively, the

"Municipalities") entered into a Joint Powers Agreement, the purpose of which was to acquire water for use by these member entities. This Joint Powers entity is called the San Juan Water Commission ("SJWC").

2. The Joint Powers Agreement authorizes the SJWC to contract with the United States Bureau of Reclamation (the "Bureau") to acquire untreated water for the area; it does not authorize the SJWC to buy or develop a water supply system or infrastructure.

3. Acting pursuant to this Joint Powers Agreement, a contract was drafted between the SJWC and the Bureau (the "Contract"). The Contract provides that immediately upon approval of the Contract by this Court, member entities of the Commission will receive untreated water from the San Juan river system under the New Mexico water rights permit held by the Bureau and issued by the New Mexico State Engineer. The Contract does not require the Bureau to construct diversion works for the member entities nor will tangible real or personal property in the form of water infrastructure be obtained by, or deeded to the member entities. Any water supply system needed to get the water from the river to the member entities must be built and paid for separately by each individual member entity.

4. Under the Joint Powers Agreement, the only entity responsible for payment to the Bureau is San Juan County; no other individual, municipality or rural water users association

is obligated to pay, nor did they sign in their capacities other than as members of the Commission, nor did any municipality pass an ordinance intending to bind itself to pay under the Joint Powers Agreement or the Contract.

5. The Contract was signed by the Bureau, the Chairman of the Commission, and in a special addendum to the Contract, by all member entities of the Commission, as required by the Joint Powers Agreement. Each signing member of the SJWC was authorized to do so by a resolution of its respective governing board.

6. The County will make payments under the Contract from a segregated fund consisting of accumulated ad valorem property taxes. Rather than issue general obligation bonds or revenue bonds and incur interest charges, the County will make Contract payments from the fund.

7. Prior to taking action on this matter, an opinion was sought from the Attorney General as to the propriety of using this funding mechanism to pay under this contract. The opinion, dated February 5, 1986, assured the participants that the funding mechanism was proper.

8. On December 6, 1989 a second opinion was rendered. This attorney general's opinion indicated that, in light of the previous attorney general's opinion, no vote of the people was required to approve the funding.

9. Notwithstanding the two opinions of two attorneys general, the County, subsequent to signing the Contract,

submitted the question of whether it should enter into and "pledge revenues" for the Contract to a vote of the people, and the majority of the people voted in favor of the Contract and authorized the County to "pledge revenues in support" of the Contract. A copy of the contract and the cost sharing agreement were available for inspection at all times for any voter to examine at the San Juan County Courthouse and the Office of the District Clerk of San Juan County. The election ballot specifically requested the voters to authorize San Juan County to enter into the Contract and to pledge revenues under the Contract.

10. On February 14, 1990, this declaratory judgment action was filed seeking a declaration from this Court that the contract was legal. The contract required a judicial ruling in state court on the legality of the contract under New Mexico State Law. The declaratory action has been vigorously contested by respondents. Notice of this action was given to all affected parties in the form of a legal notice which was published in the Farmington Daily Times newspaper. After a determination from this Court that the petitioner's notice by publication failed to provide this Court with jurisdiction over parties who did not appear to defend, those parties were dismissed and this case has proceeded as one for declaratory judgment involving petitioners and the respondents of record.

11. The County's obligation to pay for untreated water arises solely from the Contract before this Court; there are no



oral or written agreements creating such an obligation.

12. The assessment of ad valorem property tax will not exceed the constitutional limits for the counties.

The following legal issues are raised by the above uncontested facts:

1. Whether the entities that comprise the San Juan Water Commission have authority to enter into a Joint Powers Agreement and contract with the Bureau to receive bulk untreated water under the Bureau's state water rights permit.

2. Whether San Juan County, as the sole entity responsible for making payments under the JPA, has legal authority to make payments pursuant to the contract, specifically:

a. Do the New Mexico Constitution or Statutes applicable to counties authorize San Juan County to pay for untreated bulk water from the San Juan River System with ad valorem taxes or must the county use some other payment mechanism such as revenue bonds, see N.M. Stat. Ann. Section 72-4-4 (1978), or general obligation bonds that require the county to pay interest on money it borrows from some third party?

b. Does the generic "Bateman Act," N.M. Stat. Ann., Section 6-6-11 (1978) which precludes payment of service contracts beyond the current fiscal year, foreclose the County from paying under the Contract notwithstanding specific New Mexico Constitutional and water acquisition statutes which

authorized the County's actions?

c. Does the statute foreclosing municipalities from committing their ad valorem tax base to pay for water supply, see N.M. Stat. Ann Section 3-27-8, foreclose San Juan County from pledging a portion of its ad valorem tax base to pay for untreated water delivered in bulk? Similarly, does the statute prohibiting municipalities from incurring debt for water supply without passage of an ordinance, see N.M. Stat. Ann. Section 3-27-5 (1978), prohibit San Juan County from pledging a portion of its ad valorem tax base pursuant to a contract to acquire bulk untreated water, when the contract was approved by resolutions issued by all public entities to the contract?

3. Whether the language of the ballot used in the special County election to approve the Contract provided the voters of San Juan County notice adequate to meet the requirements of due process of law?

4. In a declaratory judgment action to determine the validity of a contract allowing for construction of a federal project on an adjudicated stream, must the court wait until the stream is re-adjudicated before ruling on the validity of the contract?

5. Is there, within the Contract itself, consideration set forth sufficient to support the Contract?

All of the issues set forth above are ultimately resolved in favor of the validity of the Contract in dispute.

All of the entities represented by the SJWC are public

agencies (Section 11-1-2(A), Section 3-29-1, et seq., NMSA 1978, 1961-62 Op. Atty. Gen. 61-37 (1961), Atty. Gen. Advisory Letter 86-9 (1986), Atty. Gen. Letter of 12-6-89.). Each holds the common power to contract with the United States. The Joint Powers Agreement Act provides that by agreement two or more public agencies may jointly exercise "any power common to contracting powers."

Pursuant to the JPA, the SJWC is given the power to contract with the United States, a power otherwise held by each of the agencies individually (Section 72-14-28, NMSA 1978).

The JPA provides that San Juan County will be the entity solely responsible for making payments under the JPA and the Contract. None of the other entities are obligated to make any payments under the JPA or the Contract. Only San Juan County is exercising its taxing authority to make the contract payments.

Section 72-4-2, NMSA 1978, does not restrict the County to issuance of water revenue bonds and the county has authority to use ad valorem taxes to finance the purchase of bulk untreated water. The ability to issue water revenue bonds to pay for water systems is not the exclusive funding mechanism available.

The Bateman Act does not apply. Under New Mexico law, counties have express statutory authority to purchase water with the financing mechanism of their choice. When a statute specifically grants a political entity the power to finance purchases in a certain way, the Bateman Act, as more generic,

does not apply. Finally, a vote of the citizens of San Juan County has approved the expenditure of revenues in support of the Contract, which extends beyond the current fiscal year.

Municipalities are restricted from using ad valorem taxes for the payment of water supplies (Section 3-27-5, NMSA 1978). San Juan County is not similarly restricted, and this action is not properly lodged under Section 3-27-1, et seq. It is now one in Declaratory Judgment, as requested by all parties.

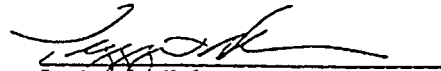
Although the SJWC has consistently stated there is no debt in the constitutional sense incurred under the contract, San Juan County, after entering into the Contract, went ahead with an election. The language of the proposition, found in Exhibit 9, May 10, 1990 hearing, was clear and voters approved the signing of the Contract, and authorized the County to "pledge revenues in support thereof."

There is no evidence before this Court that the election was contested, and assertions have been made that it was not.

Finally, the contract sets out adequate consideration: wet water in return for money. This Court is not in a position to determine, in the context of determining the validity of the Contract, whether or not either party to the Contract will ultimately live up to its promises. To do so would mean that no contracts over time would be declared valid without extensive hearing and gross speculation. To do so in this context would be to involve parties, the U. S. Government, and other states, which are not parties to this lawsuit.

Consequently, it is not necessary to wait on the re-adjudication of certain water rights before ruling on the validity of the Contract. Should there be disputes about water rights, priority dates, and so on, those are more appropriately raised in the adjudication case itself.

All issues are resolved in favor of the validity of the Contract, and summary judgment for Petitioner will be granted.

  
Peggy J. Nelson  
District Judge, Division I  
Eighth Judicial District  
(Sitting by Designation)

cc: Neil C. Stillinger  
Attorney at Law  
P.O. Box 8378  
Santa Fe, New Mexico 87504

Mr. Charles T. Dumars  
Ms. Cindy Murray  
Attorney at Law  
Post Office Box 271  
Albuquerque, New Mexico 87103

Mr. Gary L. Horner  
Attorney at Law  
P.O. Box 2497  
Farmington, New Mexico 87499

AGREEMENT IN PRINCIPLE  
CONCERNING THE  
'92 NOV 23 AM 04:40 UTE INDIAN WATER RIGHTS SETTLEMENT  
STATE ENGINEER OFFICE AND  
SANTA FE NEW MEXICO BINDING AGREEMENT FOR  
ANIMAS-LA PLATA PROJECT COST SHARING

INTRODUCTION

The United States, the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and certain non-Indian water users have reached an agreement in principle: (i) concerning the quantification, determination, and settlement of the reserved water rights claims of the Tribes; and (ii) providing for the uniform and cooperative administration of those rights. The final water rights settlement agreement will include the provision of water to the Tribes from the Dolores Project and Animas-La Plata Project and the determination of water rights of the Tribes to various streams in southwest Colorado. On March 14, 1986, an Agreement in Principle was entered into among the numerous non-Federal entities setting forth a comprehensive settlement and quantification of these reserved water rights claims. A final settlement agreement clarifying the March 14, 1986, Agreement in Principle (including a confirmation that the water rights to be secured to the Tribes by the settlement are in recognition and fulfillment of the reserved water rights claims of the Tribes) and implementing the provisions of this agreement in principle shall be executed by the non-Federal entities and the United States on or before July 31, 1986.

The United States, the State of Colorado, certain political subdivisions of the States of Colorado and New Mexico, the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe have also reached and they hereby set forth a binding agreement for the cost-sharing and financing of the Animas-La Plata Project in satisfaction of the requirement of Congress in Chapter IV of Public Law 99-88 "Department of the Interior, Bureau of Reclamation, Construction Program" (99 Stat. 293, at pp. 319-320). The non-Federal entities state that they are capable of and willing to participate in project cost-sharing and financing in accordance with the terms of this agreement. The Secretary of the Interior hereby determines that the non-Federal entities' financing plan demonstrates a reasonable likelihood of the non-Federal interests' ability to satisfy the terms and conditions of this agreement as set forth herein.

This Animas-La Plata Project cost-sharing agreement is an integral part of, and is contingent upon, a final settlement of the litigation filed in Colorado District Court for Water Division No. 7 for the quantification of the reserved water right claims of the Southern Ute and Ute Mountain Ute Indian Tribes in the State of Colorado.

WATER RIGHTS SETTLEMENT

The final water rights settlement agreement will provide for, among other things, the following:

1. A consent decree to be prepared by the Colorado parties, the United States and the Tribes providing for a comprehensive quantification and determination of the reserved water right claims of the Tribes and providing for the uniform and cooperative administration of the decreed waters. This consent decree shall be submitted for approval by the District Court for Water Division No. 7, State of Colorado, and duly approved by the court on terms agreeable to the parties. Entry of a final decree shall be contingent upon enactment of legislation which:

a. Authorizes the Tribes, pursuant to the requirements of 25 U.S.C. 177, to lease or temporarily dispose of water to the extent otherwise permitted by applicable Federal and State law, interstate water compacts, and treaties.

b. Provides for deferral, without interest, of the repayment costs allocable to municipal and industrial water supplies, including operation and maintenance costs, allocated to the Tribes from the Dolores and Animas-La Plata Projects. As an increment of water is leased or otherwise used, repayment of that increment's prorata share of the allocable costs shall commence.

c. Assures that the Tribes are not restricted by application of federal Reclamation laws from using and/or leasing waters allocated to the Tribes from the Dolores and Animas-La Plata Projects.

d. Authorizes appropriation of the federal share of the \$60.5 million Tribal Development Fund provided for in the settlement.

e. Provides that performance by the United States of the actions required by the aforementioned legislative provisions will be conditioned on the Tribes executing a waiver and release of all claims concerning water rights whether in or against any party to the settlement other than those which may arise under the terms of the settlement.

The parties contemplate that other enactments, as needed but not enumerated herein, will be drafted by the parties and proposed to the Congress.

2. The creation of Tribal Development Funds for the Tribes, with \$20.0 million for the Southern Ute Tribe and \$40.5 million for the Ute Mountain Ute Tribe, said funds to be created as follows:

a. \$5.0 million to be deposited by the State of Colorado, contingent upon appropriation by the Colorado General Assembly, to the Tribal Development Funds no later than 30 days following the deposit of the first installment of Federal monies to said Development Funds.

b. Such amount as needed, estimated at \$6.0 million, to be expended by the State of Colorado for construction of the Towaoc pipeline and domestic water distribution system for the Ute Mountain Ute Tribe as a credit to the Ute Mountain Ute Development Fund. Said construction will be initiated within one year of the execution of the final settlement agreement, and shall be complete within one year of the initiation of construction.





Contingent upon appropriations by the Congress, Phase One facilities shall be constructed by the Bureau of Reclamation within a period of not less than 12 years from the date of this agreement. Phase Two facilities will be constructed by one or more of the non-federal entities signatory to this agreement on such schedules as they deem practicable.

2. As part of their non-federal contributions, the non-federal entities agree to non-federally finance the Phase Two facilities listed above. Until the completion of Phase Two facilities, this phasing of facilities has the effect of making the Southern Ute Tribe's municipal and industrial water and the Ute Mountain Ute Tribe's municipal and industrial and irrigation water available at Ridges Basin Reservoir. In addition, it has the effect of deferring the irrigation of 10,700 acres of full service land in Colorado and the irrigation of 1,900 acres of full service land in New Mexico.

3. Construction of Phase One facilities will be financed as follows:

a. \$30 million contribution to be deposited by the Colorado Water Resources and Power Development Authority, less the amount not to exceed \$75,000 to be spent by the Authority for the surface geology survey in 1988, into an escrow account within 30 days following the initiation of irreversible construction or pre-construction activities by the Secretary for the development of Phase One of the Animas-La Plata Project. Escrow funds, including interest earned thereon, will be available on demand by the Secretary to fund no more than twenty percent of the total estimated Phase One development costs in any year.

b. \$7.3 million to be provided by the Animas-La Plata Water Conservancy District in a lump-sum payment to the Secretary no later than September 30 of the year prior to the year in which the Secretary declares that municipal and industrial water is expected to be available to non-Indian beneficiaries in Colorado. Allocable costs in excess of \$7.3 million attributable to inflation will be repayable pursuant to a repayment contract between the Secretary and the District with such escalation for inflation of materials and labor costs not to exceed 30 percent. Escalation of overhead costs will be treated in accordance with paragraph 6 below.

c. \$75,000 to be provided by the Animas-La Plata Water Conservancy District in payments of \$5,000 per year, payable on or before October 1 of each year, commencing the first year the Secretary expends funds for the Animas-La Plata Project.

d. \$50,000 to be provided by Montezuma County to the Secretary in a lump-sum payment within 30 days following initiation of irreversible construction activities by the Secretary for Phase One.

e. An estimated \$12.8 million, to be provided by the San Juan Water Commission through the agency of San Juan County, will be available to the Secretary to the estimated annual cost of developing the New Mexico non-Indian municipal industrial water share of the Phase One facilities, such funds to be provided on a schedule of applicable actual costs related to New Mexico municipal and industrial water facilities. Allocable costs in excess of \$12.8 million attributable to inflation will be repayable pursuant to a repayment contract between the Secretary and the San Juan Water Commission with such escalation for inflation of materials and labor costs not to exceed 30 percent. Escalation of overhead costs will be treated in accordance with paragraph 6 below.

f. \$5.8 million to be provided by the State of Colorado, contingent upon appropriations by the Colorado General Assembly, to the Secretary for Ridges Basin Dam. Such funds shall be provided on a schedule acceptable to Colorado and the Secretary beginning in the first year of construction of said dam.

g. All other funds needed to satisfactorily complete construction of the Phase One facilities shall be provided by the United States, contingent upon appropriations by the Congress.

4. No expenditure of federal funds by the Secretary will be made for irreversible construction actions or activities in the development of the Animas-La Plata Project prior to passage of the legislation enumerated in Paragraph One under the heading Water Rights Settlement and prior to implementation of 30-year straight-line repayment of those costs of the Animas-La Plata Project to be repaid by Colorado River Storage Project power revenues.

5. Repayment contracts must be executed by Indian and non-Indian beneficiaries of the Animas-La Plata Project with the Secretary of the Interior for repayment of the reimbursable costs of the project. In determining the reimbursable costs of the project, the financial contributions of the non-federal entities to the construction of Phase One facilities shall be credited to the allocable costs of each project function as follows:

<u>Function</u>	<u>Amount (\$ millions)</u>
New Mexico Non-Indian Municipal and Industrial	\$ 12.8
Colorado Non-Indian Municipal and Industrial	\$ 12.9
Colorado Non-Indian Irrigation	\$ 17.625

6. The repayment contracts will include provisions to recover any escalation of construction costs for Phase One facilities. In negotiating the escalation provisions, consideration will be given to fixing overhead costs charged to the Animas-La Plata Project by the Secretary.

7. All operation, maintenance and replacement costs not deferred under legislation will be borne by the non-Federal entities under the provisions of repayment contracts, subject to applicable Reclamation Law.

8. Any use of water other than that contemplated in the Final Environmental Impact Statement for the Animas-La Plata Project shall be subject to compliance with the National Environmental Policy Act.

Dated this 30<sup>th</sup> day of June, 1986.

This contract may be executed in any number of counterparts, all of which together shall constitute one original agreement.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed as of the date first above written by their respective officers and representatives, and warrants that each is duly authorized by the respective entity to execute this agreement which shall bind the parties hereto, their successors and assigns.

Paul J. [Signature]  
For the State of Colorado

Duane [Signature]  
For the State of Colorado

[Signature]  
For the Colorado Water Resources  
and Power Development Authority

[Signature]  
For the Southern Ute Indian Tribe

[Signature]  
For the Animas-La Plata Water  
Conservancy District

[Signature]  
For the Ute Mountain Ute Indian  
Tribe

[Signature]  
For the New Mexico Interstate  
Stream Commission

[Signature]  
For the San Juan Water Commission

[Signature]  
For Montezuma County

[Signature]  
For the Secretary of the Interior



IN REPLY  
REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION  
WASHINGTON, D.C. 20240

OCT 25 1991

*File*  
*file*  
*San Juan - 3*  
*Animas-La Plata*

*File 2893*

W-6500

Memorandum

To: Regional Director, Salt Lake City, Utah

From: Commissioner

Subject: Initiation of Construction, Animas-La Plata Project,  
Colorado and New Mexico

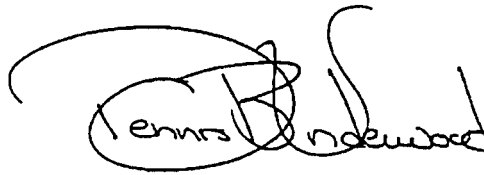
On March 13, 1990, you requested conditional approval to initiate construction on the Animas-La Plata Project. Subsequently, the Fish and Wildlife Service (FWS) issued a draft jeopardy biological opinion with no reasonable and prudent alternatives pursuant to Section 7 of the Endangered Species Act of 1973. Since that time, the Bureau of Reclamation has been working closely with the FWS to develop a biologically supportable alternative to avoid jeopardy. On July 18, 1991, you sent another memorandum to me updating the status of the consultation and the other prerequisites necessary to initiate construction of the Animas-La Plata Project.

Since your July 18 memorandum, Section 7 consultations were completed and the final biological opinion was issued by the FWS on October 25, 1991. A Memorandum of Understanding was also signed by the States of Colorado, New Mexico and Utah, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, the Jicarilla Apache Tribe, and the Department of the Interior on October 24, 1991, to develop and implement the reasonable and prudent alternative, including a Recovery Implementation Plan for the San Juan River.

In regard to Project repayment, a contract was executed with the Animas-La Plata Water Conservancy District on January 11, 1988, and confirmed by the La Plata County District Court on April 20, 1988. A second repayment contract was executed with the San Juan Water Commission on January 8, 1990, approved by referendum on April 17, 1990, and validated by the Court on August 16, 1991. Contracts with the Ute Mountain Ute Tribe and Southern Ute Indian Tribe for Indian lands to be served by the project have been negotiated and resolutions of approval of both contracts as to form have been passed. Repayment contracts for relatively small amounts of water for the La Plata Conservancy District and the Navajo Nation will be executed subsequent to initiation of construction.

The consent decree referenced in your July 18 memorandum is presently being finalized by the State of Colorado, the Animas-La Plata Water Conservancy District, the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe, and filing of the consent decree by the involved parties is anticipated soon.

All other prerequisites for construction have been completed as specified in your July 18, 1991, memorandum. Thus, in accordance with Reclamation Instructions Part 053.2.12C (1-6), you are authorized to initiate construction of the Animas-La Plata Project.



Dennis R. Anderson

THOMAS C. TURNEY, P.E.  
WATER RIGHTS CONSULTANT

1102 BUCKMAN ROAD  
SANTA FE, NEW MEXICO 87501  
(505) 968-1409

'92 NOV 23 AM 9 40  
STATE ENGINEER OFFICE  
SANTA FE NEW MEXICO

November 20, 1992

Mr. Dave Stone  
Chief, Water Rights Bureau  
State Engineer Office  
PO Box 25102  
Santa Fe, NM 87504-5102

Re: Animas-La Plata Contract Water-SEO File 2883

Dear Mr. Stone:

Attached for your inclusion in SEO File 2883 are the following documents:

Joint Powers Agreement dated March 5th, 1986

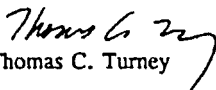
Agreement In Principal Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Project Cost Sharing, dated June 30th, 1986

United States of America and San Juan Water Commission New Mexico Repayment Contract, dated January 8th, 1990

San Juan County Court Decree No. CV 89-875-801 and CV 90-95-3 ( Consolidated) regarding judicial approval, and confirmation of the contracts between the Bureau of Reclamation and the San Juan Water Commission

I am enclosing two sets of these documents-one for the main Santa Fe office and one for your Aztec office.

Sincerely,

  
Thomas C. Turney

cc: Linda Thompson

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'92 NOV 23 AM 9 41

JOINT POWERS AGREEMENT  
SAN JUAN WATER COMMISSION

RECEIVED  
NOV 23 1992  
SAN JUAN WATER COMMISSION

STATE ENGINEER OFFICE  
SANTA FE, NEW MEXICO  
This Joint Powers Agreement (herein the "Agreement")  
SAN JUAN WATER COMMISSION (herein the

"Commission") is made and entered into to be effective on the date hereinafter stated by and between THE CITIES OF AZTEC, BLOOMFIELD and FARMINGTON (herein referred to individually by name or collectively as the "Cities"), THE COUNTY OF SAN JUAN (herein the "County"), and the SAN JUAN RURAL WATERS USERS ASSOCIATION (herein the "Association"), all of such entities being political subdivisions or public agencies as defined in the Joint Powers Agreements Act and located in San Juan County, New Mexico and empowered to enter into a Joint Powers Agreement under the laws of the State of New Mexico;

RECITALS

WHEREAS, all of the parties are interested in the Animas La Plata Project (herein "ALP" or "Project") and in the proper storage and use of untreated water; and,

WHEREAS, pursuant to the Definite Plan Report for the Project approximately 38,400 acre feet of deliverable Municipal and Industrial water (herein "M & I water"), of which 7,600 acre feet is allotted to the Shiprock area and the balance of 30,800 acre feet is estimated to be available for the use and benefit of citizens, municipalities, water users associations and industrial users in the remaining area of San Juan County; and,

WHEREAS, the parties agree that such water should be held for the use and benefit of all the citizens, municipalities, water users associations and other water users in San Juan County, New Mexico; and

WHEREAS, the "first start appropriation" from Congress to start construction of the Project cannot be used until an agreement for cost sharing and financing during construction is entered into between the Secretary of Interior and the non-federal water users; and

WHEREAS, the Congress has authorized the Secretary of the Interior and the Bureau of Reclamation to enter into an agreement with the non-federal water users providing that the non-federal entities will pay during construction a share of the cost of the construction of the Project; and the release of said funds appropriated is conditioned upon such agreement; and

STATE ENGINEER OFFICE  
MEXICO

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WHEREAS, "cost-sharing" during construction is presently projected to be 18.2 million dollars for M & I Water to be used in San Juan County; and

WHEREAS, the Cities, the Association, and the County desire to form a commission whose functions shall be to receive, divide and administer the water as well as to pay the cost-sharing during construction together with the operation and maintenance and other repayment costs required by the BOR; and

WHEREAS, it is the desire that the Commission have the power to acquire additional water rights, storage and distribution facilities for untreated water and to do all things necessary and proper to carry out the terms of this Agreement subject only to any restrictions imposed by law upon any of the contracting parties hereto; and

WHEREAS, the parties have agreed that the Commission joined by the parties shall enter into a contract with the BOR for the full amount of ALP untreated water upon the condition that if the Commission be dissolved that contracts with the BOR for ALP untreated water shall automatically revert back to the Cities and to the County as trustee for the Association.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND UNDERTAKINGS HEREIN SET FORTH, THE PARTIES AGREE AS FOLLOWS:

I

AUTHORIZING STATUTES

A. This Agreement is entered into pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978].

II

PURPOSES

A. The purposes of this Agreement are to:

1. Protect and utilize future and existing water rights and water resources of the parties which are allocated to the Commission in a manner consistent with the needs of the parties as a group;

2. Provide for equitable distribution of water rights and untreated water resources allocated to the Commission according to the needs of the parties;

3. Provide a mechanism, through the creation of the Commission, for the parties to acquire, finance, protect \*

and conserve additional water rights and water resources as though each were acting on its own authority; and

4. Provide a mechanism for implementation of plans or projects with reference to water rights, rights to water, and the use and development of untreated water and untreated water resources, including the financing of untreated water storage and conveyance projects.

### III

#### CREATION OF AND AGREEMENTS OF THE SAN JUAN WATER COMMISSION

A. There is hereby created the Commission pursuant to the authority granted by Sec. 11-1-5 NMSA 1978 composed of five (5) members to be appointed by the parties to this Agreement in the manner selected by each party for the appointment of its representative member as follows:

1. City of Farmington ----- one member
2. City of Aztec----- one member
3. City of Bloomfield----- one member
- 4 . San Juan County----- one member
5. San Juan Rural Water  
Users Association----- one member

B. Each party to the Agreement shall, in addition to the appointment of a member, appoint at least one alternate member to the Commission, who shall act in the absence or incapacity of the regular member. The alternate member shall have all of the powers, duties and responsibilities of the regular member when serving as a member of the Commission. Alternate members may attend all meetings of the Commission and may participate in discussions of the Commission but may vote only in the absence or incapacity of the regular member.

C. Each member or alternate member serving in the absence of the regular member shall be entitled to one vote.

D. A party may not frustrate conduct of the business of the Commission by failing or refusing to attend the meetings or to address the business of the Commission. If the Commission shall determine that the members appointed by a party have failed to attend regular meetings of the Commission, the Commission shall give written notice to the party affected by personal service or by certified mail, return receipt requested, demanding the replacement of either the regular member, the alternate member or both such members, and setting forth the reasons for such demand. The affected party shall, within thirty (30) days of the service of such notice upon the affected party appoint a new member and/or alternate member pursuant to the demand contained in

such notice. If the affected party fails or refuses to appoint another member and/or alternate within such thirty (30) days, the Commission shall appoint a member and/or alternate for such affected party who shall serve until such time as the affected party replaces the member or members so appointed by the Commission, provided, however, that any party may bring an action in the District Court of San Juan County, New Mexico, contesting the decision of the Commission to replace a member or members.

E. At the first official meeting of the Commission the members shall select a chairman who shall serve for one (1) year or until his successor is duly elected and qualified.

F. The Commission shall meet in compliance with the Open Meetings Act of the State of New Mexico.

G. The Commission shall not conduct business unless a majority of the members or alternates of the parties are present.

H. The Commission is entitled to receive public funds to defray the operational and administrative costs of this agreement, including, but not limited to, salaries, wages, transportation and administrative overhead. Advances of public funds may be made by the parties to this Agreement, provided that such advances shall be repaid by the Commission at the time funds are available to the Commission from its operations for such repayment purposes, and provided that the Commission shall not be required to repay money advanced to it by the County under the tax levy herein contemplated. The remaining parties to this Agreement who advance funds for the operation of the Commission may waive this repayment provision by appropriate action at their respective legislative bodies or boards.

I. The Commission shall not sell or transfer ownership of, or lease or rent any water, water rights or assets of the Commission unless approved by the vote of four (4) members of the Commission.

J. Except as provided in Article VIII-C and Article X a vote by a majority of the members of the Commission shall be required for conduct of all other business before the Commission.

K. ~~The Commission's authority shall be limited to the acquisition and holding of water rights, rights to water, storage of untreated water, and distribution of untreated water for the benefit of all the parties to this agreement and the residents of San Juan County.~~ \*

L. Subject to the provisions of subsection N below, the Commission and this Agreement shall continue and shall

not be terminated or revoked until the ALP has been substantially completed and the first water has been delivered to the Ridges Basin Reservoir. It is further contemplated that the Commission shall continue after the construction of ALP for the purposes set forth in Article II-A and Article V-A of this agreement.

M. In the event that the ALP is abandoned, terminated or never started and the water allocated to New Mexico through the Secretary of the Interior is available or may be made available to citizens in San Juan County, the Commission shall continue in existence and the funds available to it or held by the County in trust for it shall be used for the purposes enumerated herein to make said water available to the parties and their constituents.

N. The Commission shall provide a monthly operating statement to the parties to this Agreement which shall be due not later than twenty (20) days following the end of the reporting month. The Commission shall adopt approved budget and accounting procedures which will result in the strict accountability of all receipts and disbursements. During the normal budget process, the expenditures of the Commission shall be subject to the review and approval of the County. All other members shall be afforded input into the budget process.

IV

AGREEMENTS OF THE CITIES

A. The Cities, in consideration of the agreement of the County to establish the mill levy herein referenced, agree that the right to the use of water from the Animas La Plata Project shall be allocated as follows:

1. Aztec	<u>3,000</u> acre feet	( 9.7403%)
2. Bloomfield	<u>3,000</u> acre feet	( 9.7403%)
3. Farmington	<u>10,000</u> acre feet	(32.4675%)
4. Association	<u>4,800</u> acre feet	(15.5844%)
5. Reserve	<u>10,000</u> acre feet	(32.4675%)
<b>TOTAL</b>	<b>30,800</b>	<b>(100.0000%)</b>

B. The foregoing allocation is based upon the assumption that an estimated 30,800 acre feet of water is available to the parties to this Agreement from the ALP according to the the ALP Definite Plan Report. Any diminishment of or increase in the 30,800 acre feet of water shall result in a proportional decrease or increase based upon the percentage of the base of 30,800 as allocated above. The above allocation does not include water which is or may be allocated to the Shiprock Area of the Navajo Tribe of Indians.

## AGREEMENTS OF COUNTY

A. The County, in consideration of the allocation of water to the Commission, as the party with general County-wide fund raising powers, agrees to implement, maintain and keep in force a mill levy of approximately three (3) mills upon all real and personal property in San Juan County including the municipalities, for the purpose of creating a sinking fund to pay for the construction cost in accordance with requirements of the BOR contract for the ALP. After the sinking fund contains a sufficient amount to assure payment of the construction costs and upfront cost sharing of the ALP, the County shall implement, maintain and keep in force a mill levy to generate revenues to (1) pay for operation and maintenance expense for the ALP under contracts with the BOR, (2) pay for operation and maintenance expense of the Commission, and (3) may provide a sinking fund to be used for the acquisition of additional water rights, facilities for the storage and distribution of untreated water, and to fulfill other purposes of the Commission, including the development and utilization of water rights for the use and benefit of New Mexico and specifically for the governmental entities of San Juan County if the ALP is not constructed and the rights now held by the Secretary of the Interior are relinquished.

B. The County shall, at all times, sitting as the County Board of Finance, have control over the investment of funds raised by the mill levy and shall prudently invest such monies for the benefit of the fund which shall be a fund held in trust by the County for the parties and for the purposes of this Agreement.

C. The County, as trustee and custodian of funds raised under the mill levy, shall, at the beginning of each fiscal year, transfer to the Commission from such trust funds sufficient monies to meet the budget requirements of the Commission for the ensuing quarter and shall remit quarterly payments required by the Commission for the succeeding and ensuing fiscal quarter year, provided that if progress payments are to be made to the BOR or any other agency designated by the Secretary of the Interior to receive such payments, the County may, as custodian of the funds, elect to make such payments when due so that the earning value of the funds shall not be diminished by untimely sales or early redemption of securities or deposits which carry a penalty for early redemption.

D. The County shall assign to the Commission all rights that the county may acquire as a result of the failure of ALP.

VI

TITLE TO ASSETS HELD BY COMMISSION

A. Title to all water rights and assets acquired by the Commission shall only be taken in a manner which has been agreed upon by members of the Commission. Title to any water rights or property which is taken in the name of the Commission shall be held in trust by the Commission for the use and benefit of the parties. In the event the Commission is terminated, it shall transfer title to all of its assets by official action prior to its dissolution according to the terms of this Agreement. Should the Commission fail to make such a transfer of title prior to dissolution, any of the parties to this Agreement may apply to the District Court in San Juan County requesting the appointment of a special master to transfer title to the assets of the Commission in accordance with this Agreement. The parties expressly agree to be bound by such Court-ordered transfer whether or not the party is a Co-Plaintiff in the District Court Action.

VII

BOOKS AND RECORDS

A. Detailed records of all transactions of the Commission shall be kept and maintained by the Commission and shall be open for inspection and audit at all reasonable times by any member of the Commission or for inspection and audit by any person designated by the governing body of any member who may be appointed to conduct such inspection and audit.

B. Books and records of the Commission shall be subject to inspection pursuant to applicable statutes.

VIII

MUTUAL AGREEMENTS OF THE PARTIES

A. The Commission shall deal only with untreated water. The use of public funds derived from ad valorem taxes may not be used under this Agreement for the acquisition of a water supply system and the powers granted hereunder to the Commission are hereby expressly limited to contracts involving raw or untreated water, pursuant to the prohibition set out in Sec. 72-4-8 NMSA 1978.

B. The Commission shall, within its available resources, use every reasonable effort to acquire additional water and water rights and shall make every effort to obtain water rights at least equal in amount to the water rights allocated to the Commission from the ALP as soon as possible after sufficient funds have been raised from the mill levy

to pay for the construction of the ALP as herein contemplated.

C. Nothing herein contained shall be construed to prohibit any party from exercising its power or right to condemn, purchase or otherwise acquire water or water rights on its own behalf, nor shall this agreement be construed as a limitation on the right of the parties to deal with water or water rights which it presently owns; provided that if any water or water rights are offered for sale to any of the parties to this Agreement by any third party, the party shall notify the Commission of the proposed purchase and the terms thereof. In such event, the Commission shall thoroughly study and review any such proposed offer to determine if it would be advisable for the Commission to purchase the water or water rights being offered. The Commission shall consider, among other things, the hardship, if any, which might be imposed upon the party to whom the water or water right has been offered, the technical problems and the expense which might be involved with the acquisition of the water and water rights and the willingness of the offering party to deal with the Commission. If the Commission wishes to acquire the water or water rights, the Commission shall notify the parties proposing to sell and to purchase the water or water rights within thirty (30) days of being notified of the proposal whether or not the Commission wishes to enter into the purchase. The Commission shall enter into any such purchase by the same terms and conditions as those offered to the party. If the Commission, for any reason, decides not to exercise its option hereunder, the party or parties involved may purchase said water or water rights and said rights shall be the sole and separate property of the party so purchasing.

D. If any party leases or sells water for industrial use outside of its city limits or, in case of a rural water association, outside of its service area as such service area is determined by the Commission, water so leased or sold shall not be replaced by water from the Commission unless the Commission shall approve such replacement provided that, for the purpose of this Article, water which Farmington may require to supply to the San Juan Generating Station for the City of Farmington's share of San Juan Unit 4 shall be considered to be water supplied within the Farmington City limits and within the service area of the City of Farmington. It is estimated that the City of Farmington will require approximately 625 acre feet of untreated water for this purpose.

E. Member Cities shall be given the opportunity to participate in leases of untreated water to other users should the Cities so desire in order to allow member Cities

to use their existing assets and water rights to the fullest extent.

F. That, in the event of dissolution of the Commission, contracts with the BOR for ALP water shall continue in the names of the Cities and the County as trustee for the rural water users association with the continued support of the mill levy by the County.

G. The Commission shall develop standards for determining who is entitled to untreated water according to demonstrated need for untreated water.

H. The parties agree that the allocations of water set out in Article IV above represent a fair and equitable distribution of the water available under the ALP.

#### IX

##### DISTRIBUTION OF ASSETS

A. In the event of dissolution of the Commission for any reason, or termination of this Agreement, member Cities and the County as trustee for the Association shall have the absolute right to continue under independent or cooperative contracts with the BOR for the purchase of the water allocated to each member under Article IV together with a pro-rata share of the Reserve water. The assets of the commission, including the water rights acquired by the Commission shall be distributed to the Cities and to the County as trustee for the rural water users association under the same formula.

#### X

##### CONTRACTS WITH BOR

A. It is expressly understood and agreed that the matter of contracts which may be entered into with the BOR pertaining to the ALP is of great importance to the Cities and to the parties. The Commission shall not enter into any contract pertaining to the ALP unless the contract or contracts with the BOR contain the signatures of the members and unless such contract or contracts are entered into with the unanimous agreement of all parties.

B. It is further expressly agreed that any contract entered into with the BOR or which otherwise pertains to the ALP shall contain provisions which shall be binding upon the BOR and which shall absolutely assure to the members the right, based upon the opinion of special counsel to each



member experienced in water law and federal contracts, to contract directly with the BOR for ALP project water in the amounts allocated herein plus a pro-rata share of reserve water should the County discontinue or be unable to continue payment upon the ALP contracts as herein contemplated or should the Commission be dissolved or terminated for any reason whatsoever.

XI

BATEMAN ACT; CONSTITUTIONAL PROHIBITIONS  
SOURCE OF FUNDS FOR PAYMENT

A. The funds raised by the levy herein contemplated shall be special funds created for the purpose of this Agreement. If such special funds are not available, nothing herein contained shall be construed to create an indebtedness beyond the current year of any member political subdivision in violation of the Bateman Act nor shall this Agreement or anything herein contained be construed to create an obligation on the County or the Cities which constitute the general obligation or indebtedness or the Cities or the County within the meaning of Article IX, Section 12 or Section 13 of the Constitution of the State of New Mexico and shall never constitute a charge against the general credit or taxing power of the Cities or the County.

XII

SEVERABILITY

A. It is hereby declared to be the intention of the parties that the Articles, Sections, and Sub-sections, paragraphs, sentences, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph, section or Article of this Agreement shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, sections and articles of this Agreement, since the same would have been entered into by the parties without such invalid portion.

XIII

EFFECTIVE DATE

A. This Agreement shall become effective when executed by the parties pursuant to official authorization by the governing bodies, boards, councils or commission of the County, Cities or domestic water users associations; provided that this Agreement must be submitted to and approved by the New Mexico State Department of Finance and

Administration, pursuant to Sec. 11-1-3 NMSA 1978 before it is legally binding and effective.

XIV

AMENDMENT

A. This Agreement may be amended with the consent of all parties as evidenced by written approval of the governing body of each party.

XV

VENUE AND GOVERNING LAW

A. This Agreement shall be interpreted under the law of the State of New Mexico. Venue for any suit brought upon this agreement shall lie in the District Court of San Juan County, New Mexico.

IN WITNESS WHEREOF THE PARTIES have hereunto set their hands and seals by their duly authorized officers, agents or representatives below named.

DATED this 5th day of March, 1986.

CITY OF AZTEC  
A Municipal Corporation

Attest:

Debi Lee  
Debi Lee, City Clerk

By: Doug Madlock  
Doug Madlock, Mayor

CITY OF BLOOMFIELD  
A Municipal Corporation

Attest:

Patsy Milligan  
Patsy Milligan  
City Clerk

By: Erva Lynch  
Erva Lynch, Mayor

CITY OF FARMINGTON  
A Municipal Corporation

Attest:

Joyce G. Harris  
Joyce G. Harris  
City Clerk

By: Dee Montano  
Dee Montano, Mayor

SAN JUAN COUNTY  
BOARD OF COUNTY COMMISSIONERS

Attest:

Sandra Townsend  
Sandra Townsend  
County Clerk  
By: Bobbi Casswell  
Deputy

By: [Signature]  
Chairman

SAN JUAN RURAL WATER USERS  
ASSOCIATION

Attest:

[Signature]  
Secretary

By: [Signature]  
President

APPROVED:

DEPARTMENT OF FINANCE & ADMINISTRATION

By: [Signature]  
Secretary

Date: 3-28-86

JPA-74-145

---

Al Olson  
U.S. Department of the Interior  
Bureau of Reclamation  
P. O. Box 640  
Durango, Colorado 81301

Copies of Notice of Intention  
and Application No. 2883 were sent to  
the above 2/18/82.

September 18, 1963

Files: 2847, 2849, 2973, 2917  
and 2883

Re: Your File 4-700

Mr. F. M. Clinton  
U.S. Department of the Interior  
Bureau of Reclamation  
Regional Office - Region 4  
P. O. Box 360  
Salt Lake City 10, Utah

Dear Mr. Clinton:

Reference is made to your letter of September 11, 1963, regarding the above numbered files.

The water for New Mexico's portion of the Animas-La Plata Project, file No. 2883, Navajo Reservoir, the Navajo Irrigation Project and the San Juan-Chama Project, were all reserved by Notices of Intention Nos. 2883, 2847, 2849 and 2873 filed by the State of New Mexico. These Notices were later assigned to the United States of America, Department of the Interior. Notice of Intention No. 2917, filed by the Bureau of Reclamation also constitutes a reservation of water for projects to be constructed and operated by the United States.

Upon receipt of the formal applications and the plans for the projects as provided for by our statutes, the waters were reserved, and will be reserved, until formally released in writing by the Secretary of Interior (Sec. 75-5-31, NMSA, 1953 Comp.). Proof of Completion of Works for each permit should be filed soon after the works are completed so that a Certificate of Construction may be issued. Proof of Application of Water to Beneficial Use should also be filed after each project has reached its ultimate development so that a License may be issued.

Very truly yours,

S. E. Reynolds  
State Engineer

By:  
Frank E. Irby  
Chief  
Water Rights Division

FBI:lr



IN REPLY  
REFER TO: 4-700

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
REGIONAL OFFICE - REGION 4  
P. O. BOX 360  
SALT LAKE CITY 10, UTAH

1963 SEP 16 AM 8:18  
STATE ENGINEER OFFICE  
SANTA FE, N. M.

SEP 11 1963

Mr. S. E. Reynolds  
State Engineer  
P. O. Box 1079  
Santa Fe, New Mexico

Dear Mr. Reynolds :

We received your letter of May 7, 1963, informing us that there is no time limit on filing No. 2848 for the Hammond project.

We have a similar filing No. 2883 for the New Mexico part of the Animas-La Plata project. We also have filing Nos. 2847, 2849, 2873, 2917 combined for storage in Navajo Reservoir and direct diversion for the San Juan-Chama project. We would appreciate being advised as to whether or not there is a time limit on these filings. If so, would you please inform us as to the date that the water covered by these filings must be put to beneficial use, so that our records will be clear in regard to this matter.

Sincerely yours,

*F. M. Clinton*

Regional Director

February 19, 1962

Mr. Johnston Jeffries  
Attorney at Law  
Aztec, New Mexico

Dear Mr. Jeffries:

In answer to your inquiry about obtaining additional water for irrigation purposes from the Animas River we wish to inform you that a portion of the waters is reserved to the Secretary of the Interior under file No. 2883. for the development of New Mexico's portion of the proposed Animas-La Plata Project.

The winter flood flows of the Animas River are not all reserved under existing filings. By providing adequate storage facilities water could be captured when available and used at a later date. Such development would of course require submission to this office of application and plans showing the feasibility of the proposed development.

Another method of obtaining additional water would be to purchase an existing right and transfer it to the additional land you wish to irrigate. You should ascertain that the water right purchased has been adjudicated under Cause No. 01690, dated April 8, 1948, District Court, San Juan County, New Mexico and further that the water right has not been lost through non-use as set forth in the statutes.

The appropriate forms are enclosed and a copy of the Manual of Rules and Regulations to assist you in completing the forms.

If we can be of any further assistance, please let us know.

Very truly yours,

S. E. Reynolds  
State Engineer

By:  
John C. Emmett  
Asst. Surface Water Rights Supervisor

JCE:fr  
Enc.

WALTERS BUILDING

PHONE FE 4-6431

*JEE*

JOHNSTON JEFFRIES  
ATTORNEY-AT-LAW  
AZTEC, NEW MEXICO

February 14, 1962

1962 FEB 19 AM 8:18  
STATE ENGINEER OFFICE  
SANTA FE, N. M.

State Engineer  
Santa Fe, New Mexico


Dear Sir:

I represent a client who has presently existing water rights under a community ditch which receives water from the Animas River. He desires to file for appropriation and use of additional water on additional lands adjacent and a part of the tract which he is already irrigating and for which he has existing water rights.

Please advise whether it is possible at this time to file for additional water for agricultural purposes and the procedure employed.

Thanking you for this information, I am

Yours very truly,

  
Johnston Jeffries

JJ:ps

OSE-1642



PHONE DA 5-3201

120 S. ORCHARD AVE.

LLOYD M GERBER  
ATTORNEY AT LAW  
FARMINGTON, NEW MEXICO

June 4, 1959

*Joby*  
1959 JUN -8 AM 9:46  
STATE ENGINEER OFFICE  
SANTA FE, N. M.

Mr. Steve Reynolds  
State Engineer  
Santa Fe, New Mexico

Dear Mr. Reynolds:

I have been retained by the La Plata Conservancy District to represent them and their legal matters. I will appreciate your sending me a copy of the filing made by the Federal Government for the La Plata Conservancy District covering the New Mexico portion of the water for the Animas-La Plata Project.

Thanking you, I am

Very truly yours,

*Lloyd M Gerber*

LLOYD M. GERBER,  
Attorney At Law

LMG:wk

*Permit No. 2883  
sent 6/15/59*

*2883*

May 12, 1959

Mr. E. O. Larson, Regional Director  
Region 4  
U. S. Bureau of Reclamation  
P. O. Box 360  
Salt Lake City, Utah

Dear Mr. Larson:

Herewith is a copy of your Application No. 2883, which was submitted by your letter of April 10, 1959, with appropriate endorsement thereon. The statute referred to in the endorsement is quoted below in full for your convenience:

"75-5-31. Federal reclamation projects - Appropriation for. - Whenever the proper officers of the United States authorized by the Federal Reclamation Law of June 17, 1902, 38 (32) Statutes at Large, 388 or acts amendatory thereof or supplementary thereto to construct federal reclamation project works for the utilization of waters within the state, shall notify the state engineer that the United States intend to utilize certain specified waters, the waters so described and unappropriated, and not covered by applications or affidavits duly filed or permits as required by law, at the date of such notice shall not be subject to a further appropriation under the laws of the state for a period of three (3) years from the date of said notice, within which time the proper officers of the United States shall file plans for the proposed works in the office of the state engineer for his information, and no adverse claim to the use of water required in connection with such plans, initiated subsequent to the date of such notice, shall be recognized under the laws of the state, except as to such amount of water described in such notice as may be formally released in writing by the secretary of the interior as the officer of the United States thereunto duly authorized; Provided that in case of

Mr. E. O. Larson

2

May 12, 1959

failure to file plans of the proposed works within three (3) years as herein required, the waters specified in the notice given by the United States to the state engineer shall become public waters subject to general appropriations."

Yours truly,

S. F. Reynolds  
State Engineer

SER:fr  
enc.



IN REPLY  
REFER TO: 4-700

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

REGIONAL OFFICE, REGION 4  
P. O. BOX 360  
SALT LAKE CITY 10, UTAH

1959 MAY 11 AM 10:11  
STATE ENGINEER OFFICE  
SANTA FE, N. M.

MAY 8 1959

Mr. Steve Reynolds  
State Engineer  
P.O. Box 1079  
Santa Fe, New Mexico

Dear Mr. Reynolds:

Enclosed for your files is a copy of letter from the New Mexico Interstate Stream Commission, dated April 6, 1959, assigning Notice of Intention No. 2883 to the United States for use in connection with the Animas-La Plata project in New Mexico.

Very truly yours,

Regional Director

Enclosure

Copy to: Field Solicitor  
v/encl





IN REPLY  
REFER TO: 4-700

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
REGIONAL OFFICE, REGION 4  
P. O. BOX 360  
SALT LAKE CITY 10, UTAH

1959 MAY 11 AM 10:02  
STATE ENGINEER OFFICE  
SANTA FE, N. M.

MAY 8 1959

Mr. Steve Reynolds  
State Engineer  
P. O. Box 1079  
Santa Fe, New Mexico

Dear Mr. Reynolds:

Enclosed is our Application for Permit No. 2883 to appropriate public waters of the State of New Mexico for use on the New Mexico part of the Animas-La Plata project. The application was returned to us with your letter of May 4, 1959, for acknowledgment of signature by a Notary Public.

Very truly yours,

Regional Director

Enclosure



April 17, 1959

File: 2883

Mr. Lloyd M. Gerber  
Attorney at Law  
120 S. Orchard Ave.  
Farmington, New Mexico

Dear Mr. Gerber:

With reference to your letter of April 14, 1959 regarding the filing of Notice of Intention for the La Plata Conservancy District, please be advised that Notice of Intention No. 2883 covering the Animas-La Plata Project has been assigned by the New Mexico Interstate Stream Commission to the U. S. Department of Interior. The U. S. Department of Interior has submitted to this office, in accordance with Section 75-5-31, New Mexico Statutes Annotated 1953 Compilation, plans for the proposed works substantially in accordance with "Animas-La Plata Project, Status Report, Bureau of Reclamation, November, 1954.

As the La Plata Conservancy District is part of the over-all project, it will not be necessary for the District to submit a new Notice of Intention, unless they feel that the federal project will not materialize.

Enclosed are Notice of Intention forms and a Manual of Rules and Regulations Governing the Appropriation and Use of the Surface Waters of New Mexico for your information and guidance. If there is additional information needed, please feel free to contact us..

Very truly yours,

S. E. Reynolds  
State Engineer

By:  
Frank E. Irby  
Chief  
Water Rights Division

MBC/bv  
Encls.

OSE-1648

PHONE DA 5-3201

120 S. ORCHARD AVE.

LLOYD M GERBER  
ATTORNEY AT LAW  
FARMINGTON, NEW MEXICO

April 14, 1959

1959 APR 16 AM 8:47  
STATE ENGINEER OFFICE  
SANTA FE, N. M.

State Engineers Office  
P. O. Box 1079  
Santa Fe, New Mexico

Att: Mr. Frank E. Irby

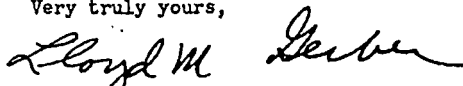
Gentlemen:

I have been retained by the La Plata Conservancy District to represent them in their water matters. At the present time I am unfamiliar with the requirements for filing on water. I will appreciate any help you can give me with respect to the procedure required for the La Plata Conservancy District, to protect their water interests.

In the event there are forms to fill out, I will appreciate your sending them to me.

I understand that we have to file a notice of intention before May 1, 1959. Can you give me the information I will need to file that notice. Thanking you, I am

Very truly yours,



Lloyd M. Gerber  
Attorney at Law

LNG:ei

2883



IN REPLY  
REFER TO: 4-700

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

REGIONAL OFFICE, REGION 4  
P. O. BOX 360  
SALT LAKE CITY 10, UTAH

1959 APR 14 PM 3:04

STATE ENGINEER OFFICE  
SANTA FE, N. M.

APR 10 1959

Mr. Steve Reynolds  
State Engineer  
P.O. Box 1079  
Santa Fe, New Mexico

Dear Mr. Reynolds:

Enclosed are the original and one copy of Application for Permit to Appropriate Public Waters of the State of New Mexico-- direct flow and storage water, for use on the New Mexico part of the Animas-La Plata project. Water appropriated by the application is covered by Notice of Intent No. 2883.

Attachment "A" consisting of one reproducible map of the New Mexico part of the Animas-La Plata project, drawing No. 69-406-557, and Attachment "C"; the status report of the Animas-La Plata project, dated November 1954, referred to in, and made a part of the application are also transmitted herewith.

We assume that when your approval is given to this application, a copy with endorsement will be furnished this office.

Very truly yours,

Regional Director

*4/5*  
Enclosures - 48200, 48051

Copy to: Field Solicitor  
Area Engineer, Durango, Colorado  
w/encls. except Att. C. - 48052





NEW MEXICO INTERSTATE STREAM COMMISSION



COMMISSIONERS

~~XXXXXXXXXXXXXXXXXXXX~~  
E. E. REYNOLDS, Secretary, Santa Fe  
L. J. COURY, Farmington  
W. H. GARY, Rince  
OSCAR M. LOVE, Albuquerque  
T. T. SANDERS, Jr., Roswell  
DRAPER BRANTLEY, Corisbad  
L. C. Strawn, Tucumcari

SANTA FE, NEW MEXICO

April 6, 1959

LEGAL ADVISORS

CLAUD S. MANN, Albuquerque  
IRVIN S. MOISE, Albuquerque

Address All Communications To  
The Secretary, P. O. Box 1079, Santa

Mr. E. O. Larson  
Regional Director  
Region 4  
Bureau of Reclamation  
P. O. Box 360  
Salt Lake City, Utah

ED		
USAR - SLCU		
APR 7 1959		
Date	Initials	To
4-7-59	PM	100
4/10	200	120
4/10	300	100

Dear Mr. Larson:

Please refer to your telegram of April 3, 1959. Pursuant to an action of the New Mexico Interstate Stream Commission at a meeting on February 6, 1958 Notice of Intention No. 2883, filed by the State of New Mexico on May 1, 1956 in connection with the proposed Animas-La Plata Project, is hereby assigned to the United States Department of the Interior; provided, that prior to May 1, 1959 a proper officer of that department files with the State Engineer of New Mexico, in accordance with Sec. 75-5-31, NMSA 1953 Comp., plans for proposed works substantially in accordance with "Animas-La Plata Project, Status Report, Bureau of Reclamation, November 1954."

Yours truly,

*E. E. Reynolds*  
E. E. Reynolds  
Secretary

SER:c

C.C. Dwyer 4-15-59