

Navajo Settlement  
July 18

June 25, 2004, Revised Draft – Navajo Nation Water Rights Settlement

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MEMORANDUM

June 25, 2004

To: Philip Mutz, Upper Colorado River Commissioner for New Mexico  
From: John Whipple, Staff Engineer, Interstate Stream Commission  
Subject: Revised Upper Colorado River Basin Depletion Schedule for New Mexico

For Congress to approve the Settlement Contract between the United States and the Navajo Nation that is proposed as Appendix 3 to the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement, the Secretary of the Interior pursuant to Public Law 87-483 will need to make a determination that sufficient water is reasonably likely to be available under the apportionments made by the Upper Colorado River Basin Compact for the Navajo Nation's uses in New Mexico under the Navajo-Gallup Water Supply Project. New Mexico State Engineer Thomas Turney via letter to Rick Gold dated February 19, 2002, transmitted to the Bureau of Reclamation a schedule of anticipated depletions in the San Juan River Basin in New Mexico, dated February 2002, that indicated that sufficient water would be available through the year 2060 to service the existing and authorized uses in New Mexico and the Navajo-Gallup Water Supply Project. The New Mexico Interstate Stream Commission staff has prepared a revised depletion schedule that incorporates minor adjustments to the February 2002 schedule for Navajo Nation uses pursuant to the proposed San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement. The revised depletion schedule indicates that under the Settlement Agreement, sufficient water would be available to service the Settlement Contract. The revised depletion schedule is to be provided to the Bureau of Reclamation for the

Secretary's consideration pursuant to subparagraph 5.1 of the Settlement Agreement, and would be subject to further minor adjustments as may be appropriate.

The depletion schedule shows anticipated average annual depletions over time for use for planning purposes only. The schedule is not a tabulation or determination of water rights and is not binding on any party with respect to how a party may use its water rights. The anticipated depletions are based on reasonable assumptions of use within the water rights for Navajo Nation and non-Navajo uses in the Basin. For example, it is anticipated that, on average, about 5 percent of the acreage within large irrigation projects such as the Navajo Indian Irrigation Project and the Hogback-Cudei Irrigation Project will be fallow. Similarly, it is anticipated that the non-Indian irrigators will not irrigate every water right acre each year and will not deplete water in excess of the historic irrigation use. To use the full water right acreage to determine average annual depletions would guarantee that some of New Mexico's Upper Basin apportionment would remain unused by New Mexico. In some instances, most notably in the Animas River valley, current irrigation use is significantly less than the historic irrigation use. With the exception of the Bureau of Reclamation's Hammond Irrigation Project, the non-Indian irrigation depletions shown in the depletion schedule are based on the historic peak of the amount of acreage irrigated in a year within the specified areas or projects, which peak generally occurred about 1965. No attempt is made in the depletion schedule to reflect transfers of water rights from irrigation to municipal and industrial uses from 1965 to the present or into the future because to do so would not change the total anticipated depletion in the Upper Basin in New Mexico, and no attempt is made to speculate as to how much water rights may be determined in the San Juan River Adjudication to be forfeited or abandoned for non-use. Also, while over 60 years of hydrologic data indicate that the San Juan-Chama Project over the long-term physically will be able to divert an average of about 107,500 acre-feet per year, the Project during any given ten-year period may divert up to 135,000 acre-feet per year under the

Project authorization in Public Law 87-483 depending upon availability of water. For these reasons, the total amount of water rights in the San Juan River Basin in New Mexico exceeds the total amount of anticipated average annual depletions shown in the depletion schedule, and the actual depletions in the Basin in 1990 and 2000 were less than the nominal current depletions shown in the schedule.

Pursuant to the proposal to source the reserved rights for Navajo Nation uses on the Navajo Indian Irrigation Project under New Mexico State Engineer File No. 2849 and to source the rights for Navajo Nation uses on the Navajo-Gallup Water Supply Project under State Engineer File Nos. 2849 and 3215, the Navajo Nation would share in shortages in the Navajo Reservoir water supply with the San Juan-Chama Project, the Jicarilla Apache Nation, the Hammond Irrigation Project and other contractors. Pursuant to the proposal to source the reserved rights for Navajo Nation uses on the Animas-La Plata Project under New Mexico State Engineer File No. 2883, the Navajo Nation would share in shortages in the Project water supply with the San Juan Water Commission and other Project contractors. Senior direct flow water rights in the San Juan River Basin, including irrigation rights for Navajo and non-Navajo ditches on the San Juan River and its tributaries, would retain their rights in a priority administration of the river system and not share shortages. However, pursuant to subparagraph 9.2 of the Settlement Agreement, the Navajo Nation would not call for a priority administration of the river system to supply the Hogback-Cudei and Fruitland-Cambridge irrigation projects; rather, when the available direct flow is insufficient to satisfy senior direct flow water rights in the Basin, the Nation would provide an alternate water supply for the two projects from the water delivery rights for the Navajo Indian Irrigation Project under the Settlement Contract. The anticipated depletion amounts for the Hogback-Cudei and Fruitland-Cambridge irrigation projects include depletions that would be accounted against the Navajo Indian Irrigation Project rights as a result of the alternate water source provisions of subparagraph 9.2 of the Settlement Agreement. Although there are limits to the amount of

water to be supplied under subparagraph 9.2 of the Settlement Agreement, the anticipated depletions for both Navajo and non-Navajo irrigation uses, and for other uses, on the San Juan River and on the Animas River do not include reductions for shortages that may still occur during times of administration of direct flow priorities.

The depletion schedules for the Upper Basin States have been developed only to project future uses to facilitate planning for future development of the water resources available to the Upper Basin States. The depletion schedules do not provide a definitive accounting of use under the Upper Colorado River Basin Compact apportionments. In the Hydrologic Determination approved by the Secretary of the Interior on February 2, 1989, the Bureau of Reclamation determined that the yield available to the Upper Basin States under the apportionment of water to the Upper Basin by Article III of the Colorado River Compact is at least 6.0 million acre-feet of water annually based on a minimum objective release of 8.23 million acre-feet per year from Glen Canyon Dam. The Upper Colorado River Commission disagrees with the assumption of a minimum release of 8.23 million acre-feet per year from Glen Canyon Dam, but the Commission does not object to the determination. The depletion schedule shows the State of New Mexico's share of 6.0 million acre-feet minimum yield available to the Upper Basin to be about 669,400 acre-feet of consumptive use annually. If in the future it is determined that the yield available to the Upper Basin States exceeds 6.0 million acre-feet of water annually and an additional allocation of water can be made available for use within the State of New Mexico's Upper Colorado River Basin Compact apportionment, then additional Navajo and non-Navajo uses can be projected or scheduled consistent with subparagraph 8.2 of the Settlement Agreement. On the other hand, if in the future it is determined that actual uses in New Mexico exceed its Upper Basin apportionment, the New Mexico State Engineer is vested with the authority to determine curtailments of junior water uses in

New Mexico as necessary to comply with the Colorado River and Upper Colorado River Basin compacts.

The depletion schedule does not reflect salvage by use. The apportionments made by the Upper Colorado River Basin Compact to the Upper Basin States are of the flow available to the Upper Basin at Lee Ferry under Article III of the Colorado River Compact. When a use of water is made in the Upper Basin, the depletion of the flow at Lee Ferry is less than the depletion of the flow at the place of use because a portion of the streamflow used would have been lost to evaporation or evapotranspiration had the water remained in the stream channels. The savings in river channel loss above Lee Ferry resulting from putting the water to use in the Upper Basin constitutes salvage by use. In particular, uses of water in intermittent tributary drainages, such as in the Chaco River drainage in New Mexico, do not result in an equivalent reduction in flow of the San Juan River. Further, uses of ground water from non-tributary aquifers, and uses of tributary ground water at locations that are far removed from perennial streams in the San Juan River Basin, do not deplete stream flow of the San Juan River by the amount of use. The Upper Colorado River Commission has not made determinations of salvage by use, and has not made determinations as to methodologies for accounting certain consumptive uses such as irrigation depletions or ground water uses. No such determinations have been considered because the Upper Basin States have not approached full development of the Upper Basin apportionment. Nevertheless, the effects of salvaged channel losses on man-made depletions of the flow at Lee Ferry by Upper Basin States were presented in the November 29, 1948, Final Report of the Engineering Advisory Committee to the Upper Colorado River Compact Commission, and Tipton and Kalmbach in 1965 prepared a report for the Upper Colorado River Commission on water supplies available for use by the Upper Division States that included the Department of the Interior's July 1965 projections of depletions at Lee Ferry that

were reduced for salvage estimated to be 4 percent of at-site depletions by projects in the Upper Basin. Only depletions of flow at Lee Ferry are chargeable against a state's Upper Basin apportionment.

Considering uncertainties in future uses and determinations, the revised depletion schedule is a reasonable projection of future development and use of the State of New Mexico's Upper Basin apportionment, and it indicates that sufficient water is reasonably likely to be available under the apportionment for the Navajo Nation's uses in New Mexico under the Settlement Contract.





# NEW MEXICO INTERSTATE STREAM COMMISSION

## COMMISSION MEMBERS

JIM DUNLAP, Chairman, Farmington  
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*March*  
~~February 24~~, 2004

Mr. Rod Kuharich, Director  
Colorado Water Conservation Board  
Department of Natural Resources  
1313 Sherman Street, Room 721  
Denver, Colorado 80203

Dear Mr. Kuharich:

This letter is in response to your February 12, 2004, letter to me regarding the Colorado Water Conservation Board's concerns on the proposed San Juan River Basin in New Mexico Navajo Nation water rights settlement. I will address your concerns relating to the review and comment process and your concerns relating to the proposed settlement.

Mr. Philip Mutz, Upper Colorado River Commissioner for New Mexico, via memorandum dated December 5, 2003, transmitted copies of the proposed Navajo Nation water rights settlement to Mr. Scott Balcomb, Upper Colorado River Commissioner for Colorado, and Mr. Greg Walcher, Colorado Department of Natural Resources Director and Colorado's representative for the Colorado River Basin States. The included Executive Summary informed readers that the proposed settlement documents are available on the New Mexico Office of the State Engineer website for public review and comment. The proposed settlement documents include a proposed settlement agreement, partial final decree, settlement act and settlement contract. We regret that the Colorado Water Conservation Board may have received delayed notice of the availability of the proposed settlement documents; however, we cannot accept responsibility for lack of internal communication in Colorado.

Nor do I apologize for the handling of Mr. Randy Seaholm's verbal request of Mr. John Whipple for an extension of the comment period. Mr. Whipple and I are ~~stunned~~ <sup>disappointed</sup> at the negative spin your February 12 letter puts on his phone conversation with Mr. Seaholm. Mr. Seaholm on or about January 15, 2004, called Mr. Whipple to inquire as to whether the Colorado Water Conservation Board could submit comments on the proposed Navajo Nation water rights settlement after January 15. Mr. Seaholm indicated that he needed to have the Board consider staff's suggested comments at a Board meeting scheduled to occur during the last week in January, and then he would need a few days following the meeting to edit a final comment letter. Mr. Whipple informed Mr. Seaholm that the January 15 deadline for submitting comments was not a drop dead date; rather, it was advertised in the Executive Summary that getting comments in by that date would ensure that the comments would be

fully considered in the final settlement negotiations. Final settlement negotiations would begin soon thereafter. Mr. Whipple also informed Mr. Seaholm that the later comments are received the less chance there may be to fully consider them prior to finalizing and approving settlement documents depending on how quickly the negotiations proceed. The negotiations are ongoing, and if a settlement is reached there will be further opportunities to discuss the settlement as it moves through the legislation process.

Mr. Whipple further discussed with Mr. Seaholm that although New Mexico and the Navajo Nation were not required by law to have a public review and comment period on the proposed water rights settlement, the New Mexico State Engineer and Navajo Nation representatives had previously committed to public review and comment on the proposal for the purpose of making a settlement as good and as politically supportable as possible prior to execution of a settlement agreement. Political support will be necessary to achieve approval by Congress of a settlement act to approve the settlement agreement, approve a water delivery contract, and authorize funding of water projects. Mr. Whipple asked what concerns or issues Mr. Seaholm or the Board might have regarding the proposed settlement, and Mr. Seaholm responded only that Colorado's main concern is that a settlement fits within New Mexico's Upper Basin apportionment. Mr. Whipple told Mr. Seaholm that a condition of reaching settlement with the Navajo Nation throughout the negotiations has been that Navajo Nation uses of water from the San Juan River Basin in New Mexico under any settlement must fit within New Mexico's compact apportionment. The proposed settlement documents also provide that uses of water by the Navajo Nation must be consistent with the Colorado River and Upper Colorado River Basin compacts.

The first concern about the settlement documents stated in your February 12 letter relates to how the proposed settlement and water uses in the San Juan River Basin in New Mexico fit within New Mexico's Upper Basin apportionment and how New Mexico water uses will be administered. Mr. Mutz has consulted with the Upper Colorado River Commission for several years on the planning of the Navajo-Gallup Water Supply Project. The Project has been included in current and past depletion schedules for New Mexico adopted for planning purposes by the Upper Colorado River Commission, the most recent dated January 2000 and formally adopted on December 15, 1999, by resolution of the Commission. Planning for the Project progressed, and Mr. Mutz via memorandum dated December 5, 2001, provided to the Commission for discussion a revised New Mexico depletion schedule updated to reflect recent developments. Mr. Thomas Turney, New Mexico State Engineer, via letter dated February 19, 2002, to Mr. Rick Gold, Acting Regional Director for the Upper Colorado Region, transmitted the revised depletion schedule to the Bureau of Reclamation with a request that the 1988 Hydrologic Determination be extended to 2060 to indicate water availability under New Mexico's Upper Basin apportionment for contracting a water supply for the Project. Your July 11, 2002, letter to Mr. Gold provided comments on New Mexico's proposed revision to its depletion schedule, which essentially are the same as or similar to the first concern expressed in your February 12, 2004, letter. Mr. Turney via letter to you dated August 2, 2002, answered the Colorado Water Conservation Board's concerns.

During the past few years, Mr. Mutz worked with the Upper Colorado River Commission and the Upper Basin States to address the issue of using some of New Mexico's Upper Basin apportionment in the Lower Basin via the Project. New Mexico's revised depletion schedule and use of Upper Basin water in the Lower Basin were deliberated by the Commission. The deliberations culminated on June 19, 2003, with the Commission adopting a resolution that stated support from each of the Upper Division States for the Project, and provided for accounting against New Mexico's Upper Basin apportionment the Upper Basin water diverted by the Project to the Lower Basin portion of New Mexico. New Mexico's Upper Basin depletion schedule was proposed to be updated with only minor revisions to the February 2002 revised depletion schedule to reflect the December 5, 2003, proposed Navajo Nation water rights settlement. New Mexico believes that with the settlement, the amounts of water already included in the depletion schedule for historic and existing uses and the amount of water remaining and reserved are sufficient for other federal reserved rights claims in the San Juan River Basin in New Mexico.

It is not clear why the Colorado Water Conservation Board now reiterates essentially the same concerns it had prior to the Upper Colorado River Commission adopting its resolution of June 19, 2003, in support of the Project. In any event, I find that Mr. Turney's August 2, 2002, letter to you adequately addresses the first concern about the settlement documents stated in your February 12 letter. A copy of Mr. Turney's August 2, 2002, letter is enclosed for your ready reference.

The second concern about the settlement documents stated in your February 12 letter relates to water rights administration in New Mexico. Under the proposed Navajo Nation water rights settlement, the New Mexico State Engineer would have jurisdiction over the transfer of uses of water off Navajo Nation lands and also the transfer of uses of water within Navajo Nation lands where those uses are made under permits obtained in accordance with state law, ~~including permits issued to the Secretary of the Interior for the Navajo Reservoir water supply and the Animas-La Plata Project.~~ The Navajo Nation ~~without State Engineer approval may transfer~~ within Navajo lands ~~only~~ uses of water under reserved water rights, ~~not including reserved rights that are subordinated to being serviced under permits issued to the Secretary, and then~~ ~~only~~ if non-Navajo water rights are not impaired and the use remains in New Mexico. Such internal transfers remain under the jurisdiction of the San Juan River Adjudication Court if a dispute arises as to impairment issues.

Water rights under the proposed settlement ~~may~~ <sup>would</sup> not be marketed or transferred out of the State of New Mexico unless and until it is determined that the Navajo Nation legally may market New Mexico water rights to uses in other states, and unless and until both the New Mexico Interstate Stream Commission and the ~~New Mexico State Engineer~~ <sup>would</sup> approve such an interstate transfer. The proposed settlement ~~also requires~~ <sup>would</sup> that uses of water under the Navajo Nation's water rights provided by the settlement must be made consistent with the terms of the Colorado River and Upper Colorado River Basin compacts. An absolute prohibition against

any possibility of litigating whether or to what extent any law or compact does or does not apply to the rights of Indian tribes and nations to market or use their water rights obtained in one state outside the boundaries of that state has not been included in other Indian water rights settlements in the San Juan River Basin. You may wish to read the settlement documents to see if your concerns are not adequately covered, and we will also review the settlement documents, to see if clarifications are needed. *and other comments received regarding administrative and jurisdiction issues*  
*changes or*

The third concern about the settlement documents stated in your February 12 letter relates to how increased water use in the Little Colorado River Basin pursuant to the proposed water rights settlement may adversely affect the population of humpback chub in the river. Currently, existing public water supply systems in Gallup and surrounding Navajo communities in New Mexico consumptively use approximately 6,000 acre-feet per year of groundwater, mostly from wells up to 2,000 feet deep or more. With the Navajo-Gallup Water Supply Project, much of this use would be replaced by use of surface water imported from the San Juan River. While there is some possibility of increased return flow from the Project to the Little Colorado River in the future, as compared to current conditions, it is very doubtful that return flow to the river would reach in measurable quantities the lower stretches of the Little Colorado River some 250 miles downstream. The proposed settlement act also includes funding to construct and rehabilitate deep wells to provide several hundred acre-feet per year of continued groundwater use by the Navajo Nation in the Little Colorado River Basin in New Mexico in conjunction with the Project, which should be of no impact on the flow of the Little Colorado River in its lower stretches. I see no relationship between the Project or the proposed settlement and conservation of the humpback chub population in the Little Colorado River.

The fourth concern about the settlement documents stated in your February 12 letter relates to possible settlements of claims of the Colorado Ute tribes to waters of the San Juan River Basin in New Mexico. The Southern Ute Tribe was not reserved lands in New Mexico. A relatively small portion of the Ute Mountain Indian Reservation extends into New Mexico, but none of the reservation in New Mexico geographically connects to the San Juan River or any other perennial stream. Historic and existing uses of water on the portion of the reservation in New Mexico consist of a small amount of seasonal domestic and stock uses. The Ute Mountain Ute Tribe under the Colorado Ute Water Rights Settlement Act Amendments of 2000 was provided sufficient water for a permanent homeland, including for a hypothetical future power plant. New Mexico believes that with the settlement, the amounts of water already included in the depletion schedule for historic and existing uses and the amount of water remaining and reserved are sufficient to deal with the reserved rights claims of the Ute Mountain Ute Tribe in New Mexico.

The fifth concern about the settlement documents stated in your February 12 letter relates to use of water in the Lower Basin in Arizona under the proposed Navajo-Gallup Water Supply Project. I fully expect that upon reading the proposed settlement documents, you will find that your concern is invalid. Specifically, I refer you to subparagraph 8.5 of the proposed settlement agreement, paragraph 5 of the proposed partial final decree, and section 104 of the

Mr. Rod Kuharich  
February 24, 2004  
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proposed settlement act (see in particular subsections 104(f) through 104(i)). New Mexico and the Navajo Nation are fully aware that the Upper Colorado River Commission's resolution of June 19, 2003, resolves an accounting of uses under the Project in the Lower Basin only within the State of New Mexico, and that the Navajo Nation must work with Arizona and the other Upper Basin States to resolve an accounting of uses under the Project in the Lower Basin within the State of Arizona before water can be delivered for the uses in Arizona. The proposed settlement agreement between the State of New Mexico and the Navajo Nation would not be subject to resolving an accounting of uses under the Project in Arizona.

The sixth concern about the settlement documents stated in your February 12 letter relates to the New Mexico Interstate Stream Commission's comments on a recent Section 404 permit application and related Biological Assessment submitted by the La Plata Water Conservancy District to the Corps of Engineers for the proposed Long Hollow Dam and Reservoir in Colorado. The Commission's comments on the permit application and Biological Assessment were submitted to the Corps of Engineers via letter dated December 12, 2003, from Mr. Whipple to Mr. Mark Connelly. I find Mr. Whipple's review and analysis of the two documents, and his analysis of how the proposed dam and reservoir as described in the two documents would impact Colorado's Interstate Station deliveries under the La Plata River Compact, to be accurate. I also reiterate my insistence that the State of Colorado comply with the Article II.2 Interstate Station delivery requirement of the La Plata River Compact.

During Mr. Whipple's phone conversation with Mr. Seaholm described at the beginning of this letter, Mr. Seaholm told Mr. Whipple that the State of Colorado had not been consulted or otherwise involved in the preparation of the Section 404 permit application and related Biological Assessment submitted by the La Plata Water Conservancy District on Long Hollow Dam. Mr. Seaholm stated that if the State of Colorado had been involved, the documents and the description of the project operations would have been significantly different. Mr. Hal Simpson, Colorado State Engineer, has apologized to me for the content of the permit application and Biological Assessment and expressed the same sentiment to me that Mr. Seaholm expressed to Mr. Whipple.

Sincerely,

Mr. John R. D'Antonio, PE  
New Mexico State Engineer  
Secretary, Interstate Stream Commission

Enclosure

Mr. Rod Kuharich  
February 24, 2004  
Page 6

Copy: Scott Balcomb  
Larry Anderson  
Patrick Tyrrell  
Philip Mutz  
Wayne Cook  
Rick Gold  
Stanley Pollack

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STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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February 12, 2004

Mr. John D'Antonio  
New Mexico State Engineer  
Secretary, New Mexico Interstate Stream Commission  
Bataan Memorial Building, Room 101  
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Santa Fe, New Mexico 87504-5102

Bill Owens  
Governor  
  
Russell George  
Executive Director  
  
Rod Kuharich  
CWCB Director  
  
Dan McAuliffe  
Deputy Director

Ref: Navajo Nation Federal Reserved Water Right Settlement with the State of New Mexico

Dear Mr. D'Antonio:

The purpose of this letter is to provide the Colorado Water Conservation Board's concerns regarding the proposed settlement between the State of New Mexico and the Navajo Nation of the Navajo's federal reserved water rights in the San Juan River Basin of New Mexico. The Colorado Water Conservation Board was not informed of the availability of the draft proposed settlement documents, rather, we learned indirectly and well after the fact that the documents were posted on your website. Given the late notice, Randy Seaholm on my staff verbally requested an extension of time to comment from John Whipple and was told by Mr. Whipple that New Mexico felt no obligation to even request comments, although he did indicate that comments would be accepted after the deadline but gave no assurance that they would be fully considered. We offer the following comments on the proposed settlement documents and given the importance of the San Juan River water resources to both our states, strongly urge that they be given full consideration.

The Colorado Water Conservation Board considered the proposed settlement agreement documents during its January 27-28, 2004 meeting and expressed the following concerns:

1. Does the proposed settlement actually keep New Mexico within its compact apportionment under the current "Hydrologic Determination"? The settlement agreements claim to accomplish this, but New Mexico is advancing a depletion schedule that assumes that 5% of the irrigated land in the San Juan Basin will be fallow at any given point in time. If this does not occur, it appears that New Mexico would rely on certain subordination clauses in the settlement to remain within their compact apportionment. No accounting details on how this would be accomplished have been worked out and disclosed. This concern is compounded by the statement on page 4 of the Executive Summary that indicates individual members of the Navajo Nation that have been allotted land by the U.S. are not bound by the settlement agreement and may have additional claims that would have to be "offset" by corresponding reductions in use by the Navajo Nation. Furthermore, we are not aware of any settlements with the Ute Tribes in New Mexico and the

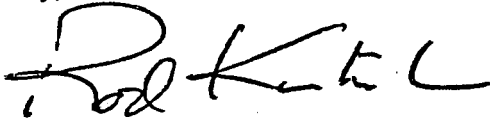


settlement of any federal reserved water rights that they may have would only cause New Mexico to exceed its compact apportionment under the current "Hydrologic Determination." The federal trust responsibilities to all tribal interests in the San Juan Basin should be fully considered in this settlement process given the magnitude of the proposed settlement. Therefore, we believe that adequate accounting and additional assurances are necessary to demonstrate that New Mexico will remain within its compact apportionment.

2. Under the settlement agreement, the Navajo Nation would administer rights on Navajo Lands subject to non-impairment of non-Navajo water rights. We are concerned that if this clause is not tightly written, that it could open up interstate water marketing, given that Navajo lands are located in several states. The fact that transfers of water by the Navajo Nation to non-Navajo lands are subject to approval by the New Mexico State Engineer lends some comfort, but may not be adequate to avoid the issue and uphold the integrity of the compact. Therefore, we request that specific language be added that clearly prohibits interstate water marketing.
3. The increased use of water and additional water development in the Little Colorado River (LCR) could adversely impact the population of Humpback Chub (HBC) in the LCR. No mention of HBC in the LCR is noted in the documents that we can see. We feel that it would be appropriate to at least acknowledge this fact. As we have discussed during the Glen Canyon Adaptive Management Program, a recovery program for the Colorado River and its tributaries between Glen Canyon Dam and the high water line on Lake Mead would be a good thing and this may be a good opportunity to establish such a program for this area, given that the HBC population in the LCR is pivotal to the recovery goals for these endangered fish. Both New Mexico and the Navajo Nation participate in the Glen Canyon Adaptive Management Program (GCAMP) through representation on the Adaptive Management Workgroup and the Technical Workgroup and understand the limitations of the GCAMP. This could be the ideal time to get the Navajo Nation to assist in this effort.
4. We are aware that the Ute Tribes have some lands in New Mexico and this settlement may foreclose any water development potential on those lands. Much as the Navajo Nation derived some considerations for lands that could be serviced by the Animas-La Plata Project, the Southern Ute and Ute Mountain Tribes may deserve similar considerations in this settlement process.
5. The resolution passed by the Upper Colorado River Commission in June 2003 pertaining to the use of Upper Colorado River Basin water in the Lower Colorado River Basin relates solely to a Navajo-Gallup Project in New Mexico. However, the settlement indicates, in footnote 4 on page 3 of the Executive Summary, that the delivery of water to the Window Rock area remains part of the Navajo-Gallup Project. This seems to not only exceed New Mexico's authority to settle the Navajo Nation's federal reserved water rights in New Mexico, but clearly exceeds the scope of the resolution passed by the Upper Colorado River Commission in June 2003.
6. Lastly, the settlement of federal reserved water rights in New Mexico should not impact the continued development of water resources in Colorado that are clearly within Colorado's compact apportionment. We are deeply concerned by many of the comments New Mexico, the Navajo Nation and Jicarilla have provided on the Long Hollow Reservoir project, particularly with respect to the San Juan River Recovery Implementation Program, that are either misleading to completely incorrect.

In closing, we recognize the vital importance of settling federal reserved water right issues within a state's compact apportionment and want to assure you that we will work with you as appropriate to accomplish this goal, while assuring that our interests under the compacts are protected as well. We would strongly encourage a meeting to further discuss these matters in the very near future.

Sincerely,



Rod Kuharich  
Director

Cc:

Colorado Water Conservation Board Members  
Upper Colorado River Commission Members  
Stanley Pollack, Navajo Nation  
Ernest House, Ute Mountain Ute Tribe  
Dan Israel, Ute Mountain Ute Tribe  
Leonard Burch, Southern Ute Indian Tribe  
Scott McElroy, Southern Ute Indian Tribe  
Les Taylor, Jicarilla Apache Nation  
John Keyes, Commissioner, U.S. Bureau of Reclamation  
Terry Virden, Director, U.S. Bureau of Indian Affairs  
Rick Gold, Regional Manager, U.S. Bureau of Reclamation – Salt Lake City  
Carol De Angelis, Area Manager, U.S. Bureau of Reclamation – Grand Junction  
Joy Nicholopoulos, U.S. Fish and Wildlife Service – Albuquerque  
Dan Law, Colorado Water and Power Development Authority  
Ken Beegles, Division 7 Water Engineer  
Sam Maynes & Janice Sheftel, Southwest Water Conservation District  
Mike Griswold, Animas-La Plata Water Conservancy District  
Brice Lee, La Plata Water Conservancy District  
Randy Kirkpatrick, San Juan Water Commission, New Mexico  
Stella Montoya, La Plata Conservancy District, New Mexico  
John Whipple, New Mexico Interstate Stream Commission



July 9, 2004, Revised Draft  
SAN JUAN RIVER BASIN IN  
NEW MEXICO NAVAJO  
NATION WATER RIGHTS  
SETTLEMENT:

Summary of Changes to the  
December 5, 2003, Draft

Disclaimer: This summary is a  
product of NMISC staff. A settlement  
has not been approved.

HOGBACK AND FRUITLAND  
IRRIGATION PROJECTS

- Increased 1868 priority diversion and depletion amounts based on 1938 Hydrosurvey CIRs and diversion requirements
- Provided access to Navajo Reservoir storage through alternate water source provisions

## NAVAJO INDIAN IRRIGATION PROJECT

- Increased average depletion to 270,000 AF
  - Recognizes Biological Assessment amount
  - Mitigates impact of alternate water source provisions on the NIIP water supply and other risks
- Reuse authorized for tail water, waste water and water recaptured to prevent waterlogging
- Annual diversions and depletions not to exceed ten-year average amounts by more than 15%
- Increase capital funding authorization to \$373 million above current cost ceiling

## NIIP TRANSFERS

- NIIP rights fungible
  - NIIP authority to change uses if total diversion demand <353,000 AF/YR
  - State Engineer application to divert more than 353,000 AF/YR if rights used for non-irrigation purposes
- NIIP supply protected by condition for alternate water source provisions

## NAVAJO-GALLUP WATER SUPPLY PROJECT

- Forbearance of Settlement Contract uses in New Mexico to allow delivery of water to Window Rock during shortage conditions
- NGWSP supply protected by alternate water source provisions
- Increased capital funding authorization to \$589 million

## ADDITIONAL ALLOCATIONS

- Added 50% share of additional Animas-La Plata Project allocations if available in future (other 50% to SJWC)
- Made certain the 50/50 sharing between Navajo and non-Navajo users of additional allocation if Upper Basin yield increased

## GROUND WATER RIGHTS

- Withdrawals greater than 2,000 AF/YR permitted, subject to:
  - State Engineer approving offset of San Juan River impacts >2,000 AF/YR - requires Navajo forbearance of surface water rights
  - Non-impairment
- Jurisdiction:
  - Navajo Nation on trust lands
  - State Engineer on fee lands
  - Cooperate on development of hydrologic models
- Existing NM-AZ interstate water systems - 400 AF for historic and future domestic and sanitary uses

## WATER ADMINISTRATION

- Alternate water source provisions:
  - Reduces priority calls on non-Navajo users
  - Provides effect of access to storage at no cost
- Forbear Navajo uses to protect Animas-La Plata Project allocations from compact calls (Articles III and IV of Upper Basin Compact)
- Top water bank – Navajo banking options
- Navajo jurisdiction on trust lands
- State Engineer watermaster on San Juan River

## OTHER PROVISIONS

- Commitment to complete adjudication by 2016
- Commitment of \$10 million state funding for ditch improvements
- Navajo agreement to Echo Ditch rights, subject to abandonment, forfeiture or unauthorized use





San Juan  
Animas - La Plata  
File # 9

OSE-1749

STATE ENGINEER OFFICE

MEMO

3-30-64

DATE \_\_\_\_\_

TO: Dave Hale

( ) For Your Information ( ) Note & Return

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REMARKS: First carbon copy was mailed to

Senator Mechem 3-30-64

DL



## ANIMAS-LA PLATA PROJECT, COLORADO AND NEW MEXICO

New Mexico Interstate Stream Commission

March 1964

Irrigated farming along the San Juan River and its tributaries Animas and La Plata Rivers in New Mexico and Colorado was begun in the late 1870's. By the early 1900's attention was being given to large supplies of unappropriated water and large tracts of undeveloped land in the New Mexico portion of the San Juan basin, and a number of schemes for development -- some of them grandiose and impractical -- were brought forth. A number of the plans concerned development of the waters of Animas River, and during the years 1904 and 1905 the newly organized U.S. Reclamation Service investigated the possibilities of diverting from the river above Durango, Colo., to serve lands in both Colorado and New Mexico. The results of the investigation were unfavorable. Several other investigations of possibilities of diverting from the Animas River above and below Durango were carried out by State and private interests prior to 1920, but nothing came of the studies.

Execution of the Colorado River Compact in Santa Fe, N. Mex., on November 24, 1922, intensified interest in developing waters of the San Juan River and its tributaries in New Mexico. On November 27, 1922, just three days after the Colorado River Compact was signed, the States of Colorado and New Mexico executed a compact apportioning waters of La Plata River between the two states. Operation of the compact is based upon streamflow at two

gaging stations; State-line and Hesperus near the head of irrigation in Colorado. Validity of the compact eventually was tested in the Supreme Court of the United States, and its sustainment in the high court did much to foster the compacting method of settling controversies between states.

In 1923, the State of New Mexico appropriated \$12,500 to finance studies of possibilities of expanding irrigation in the New Mexico portion of the San Juan basin, and the State invited the U.S. Bureau of Reclamation to make the investigation on a cooperative basis. The investigation concentrated on a proposal to divert from the Animas River in Colorado to serve non-Indian lands in both Colorado and New Mexico. The plan proposed construction of 1) a 100,000-acre-foot storage dam on Animas River above Durango, 2) a diversion from Animas River just below Durango, 3) a main canal from this point running southwesterly for 45 miles and discharging into La Plata River above the State line, 4) a diversion from La Plata River about a mile below the State line, 5) a main canal from this point running southwesterly for 12 miles and discharging into Meadows Reservoir, and 6) a distribution system from these two main canals and from the Meadows Reservoir for the irrigation of arable lands extending from Animas River on the east to the range of mountains known as the "Hogback" on the west, and to the San Juan River on the south. A report, delivered in December 1924, concluded that the project was not economically feasible at that time, but that it might become financially feasible at some time in the future by "including the Navajo and Southern Ute Indian Reservation lands in the plans of the project, which will make a very material reduction in the estimated per acre cost." Thereafter, studies of the proposed project contemplated that water developed would serve both white and Indian lands.

In 1925 and again in 1930 the Bureau of Reclamation reported on an irrigation project utilizing storage on the La Plata River and tributaries, without importation of Animas water. Other agencies in the period 1933-41 studied the possibilities for development of the La Plata River area in Colorado and New Mexico. The Bureau of Reclamation conducted project investigations of the La Plata Project, Colorado and New Mexico, in 1941 and 1944. The project was reported infeasible at those times.

Interest in the projects continued, and the 1946 Colorado River Basin Report of the Bureau of Reclamation included the Animas-La Plata project as one of 20 projects considered for the San Juan River basin in the agency's comprehensive plan for basin development. The 1946 report proposed a project to furnish supplemental water for 24,700 acres of insufficiently irrigated land in the La Plata River basin in Colorado and New Mexico, as well as a full water supply for 83,300 acres of new land in that basin and adjoining areas -- including 25,500 acres under the Monument Rock project on the Navajo Indian Reservation. Construction of nine reservoirs was proposed, three of which would have been primarily for power production.

The Upper Colorado River Basin Compact, signed in 1948, apportioned to New Mexico 11.25 percent of the total consumptive use of Colorado River water available to the four upper basin states: Colorado, New Mexico, Utah, and Wyoming, after deduction of the use of an amount of water not to exceed 50,000 acre-feet per annum in the State of Arizona. (Waters of La Plata River thus became subject to three interstate compacts.) Article VIII(a) of the upper basin compact created an interstate administrative agency known as the Upper Colorado River Commission composed of one member each from the States of Colorado, New Mexico, Utah, and Wyoming, and one member representing the United States. The instrument granted to the body broad administrative

powers and, following the compact's ratification at state and national levels in 1949, the Commission began cooperating with the Bureau of Reclamation and other Federal and state agencies in investigating means whereby the four upper basin states could proceed with developing the waters allocated to them collectively and individually under the compacts of 1922 and 1948.

On October 29 and 30, 1949, the Commission held its first annual meeting in Salt Lake City, in joint session with the Colorado River Basin States Committee. Officials of the Department of the Interior presented plans for the Colorado River Storage Project, and joint committees approved the plan in principle. Recognizing the necessity for unified action, the committees recommended that certain projects be included in the initial list of participating projects, and it was understood that other projects would not be sought without further action of the committees. The projects recommended were those for which reports were available. The Shiprock Project was not recommended because there was no feasibility report available at that time and it was felt there probably would be no such report available by the time a report on the Storage Project would be submitted to Congress.

The following statement of New Mexico is an excerpt from that portion of the proceedings in which the states were acting on recommendations concerning participating projects:

MR. BLISS: I move the following New Mexico projects be considered as the initial list to be included as participating projects: New Mexico unit of the La Plata Project; New Mexico part of the Pine River Extension; the Hammond Project; and, if the report is completed, the Shiprock Project.

Prior to release of the main river report, review of the La Plata Project by the Department of the Interior had indicated that the benefit-cost ratio was unfavorable, and that the project as then proposed could not be authorized for construction. Being so notified, New Mexico urged that every effort be made to work out a revised project for the La Plata Unit which could be



included as a participating project in the near future.

Pursuant to authorization contained in a letter from Assistant Secretary Warne by letter dated July 26, 1950, the San Juan Technical Committee was organized in 1950 to coordinate the efforts of the Bureau of Indian Affairs and Regions 4 and 5 of the Bureau of Reclamation in the study of the utilization of waters of the San Juan River in New Mexico.

In December 1950 the Bureau of Reclamation transmitted to the states concerned its comprehensive planning report, Colorado River Storage Project and Participating Projects, Upper Colorado River Basin. The report presented a plan for an overall project which would consist of a combination of dams, reservoirs, power plants, and other appurtenant structures on the river and its principal tributaries above Lee Ferry. The project reservoirs would, 1) regulate the flow of the river, 2) assure delivery of water to the lower basin as required by the compact of 1922, and 3) make available for development water apportioned to the upper basin by the compacts of 1922 and 1948 for use in irrigation and generation of hydroelectricity, and for other purposes. Revenues from the sale of project-generated power would be sufficient to pay all reimbursable costs of the storage phase of the project and would assist irrigators in payment of participating projects that would utilize the river's waters.

Of 16 projects recommended by the Upper Colorado Basin States for initial participation, 12 were recommended for authorization: Eden, Wyo.; Paonia, Colo.; Central, Utah; Emery County, Utah; Florida, Colo.; Hammond, N. Mex.; La Barge, Wyo.; Lyman, Wyo.; Pine River, Colo., and N. Mex.; Seedskaadee, Wyo.; Silt, Colo.; and Smith Fork, Utah. The remaining four projects, including Animas-La Plata in Colorado and New Mexico, and Shiprock in New Mexico, were recommended for further study and planning.

Subsequent study of the La Plata unit of the Animas-La Plata Project failed to establish feasibility. In a letter to Secretary Chapman, dated June 29, 1951, Bureau of Reclamation Commissioner, Michael Straus, observed that "the plan for the project does not appear economically justified at this time. The La Plata Project is being reanalyzed, and, in addition, further consideration can always be given to the present plan of development under changed conditions. If the results of either of these conditions are favorable, the La Plata Project can be recommended as a participating project at an appropriate time."

The Technical Coordinating Committee reported in January 1951 and again in March 1952 on use of waters of the San Juan River in New Mexico. The 1951 report stated that anticipated depletions by present and future projects for which New Mexico had committed uses included a 3,500 acre-foot reserve for the La Plata Unit of the Animas-La Plata Project. The report discusses the Shiprock Project, the San Juan-Chama Project, and the South San Juan Project, and states that the fourth major potential project for use of San Juan River basin water in New Mexico is the Animas-La Plata Project to irrigate 40,000 acres of new land, depleting about 100,000 acre-feet annually.

By letter of March 4, 1953, Governor Mechem requested that the Secretary of the Interior make studies of the three major main-stem projects on the river above Blanco which would compete directly with each other for the common supply: Shiprock, South San Juan, and San Juan-Chama. The fourth major project, the Animas-La Plata, would derive its water from the Animas River and therefore would not be in direct competition with the main-stem projects for a common water supply.

In a letter to Secretary McKay dated April 17, 1953, Governor Mechem requested that in its overall plan for use of San Juan waters the Bureau of

reserve enough depletion under New Mexico compact allocation so that the Animas-La Plata Project could be feasibly developed as an interstate project.

In an effort to obtain immediate relief from water shortages during the irrigation season, pending further action on the Animas-La Plata Project, the La Plata Conservancy District in June 1954 requested that the Interstate Stream Commission investigate the feasibility of constructing a small reservoir on La Plata River in New Mexico to store flood flows of the river for use in irrigation. The investigation was authorized and carried out by personnel of the State Engineer Office. The study found such a project to be infeasible.

In November 1954 the Bureau of Reclamation issued a status report titled Animas-La Plata Project, Colorado and New Mexico, which contemplated an interstate project of 86,620 acres, of which approximately 66,020 acres were in Colorado and 20,600 acres were in New Mexico. Approximately 21 percent of the total acreage was either Ute Tribal land or Indian allotment land. Of the total, some 20,100 acres in Colorado and 5,540 acres in New Mexico already were under irrigation by direct diversion from La Plata River and were scheduled to receive supplemental water from the Animas River. The balance of the recommended acreage represented new lands.

The report concluded:

The rough analyses made for this report show that the Animas-La Plata is economically feasible. Further studies directed toward completion of a feasibility report for submission to Congress are warranted. Detailed investigations of all phases of the project should be preceded, however, by the assembly of more reliable data on the more critical aspects. Periodic analyses of the information should be made. If at any time it is conclusively shown that the project would be unjustified or would not be supported by the local people, the investigations could be terminated.

On July 5, 1955, the New Mexico Interstate Stream Commission Adopted a resolution approving the proposed Animas-La Plata Project for inclusion in

the Colorado River Storage Project and instructing Mr. Bliss, as New Mexico Commissioner, to advise the Upper Colorado River Commission that New Mexico favored its inclusion as a provisional participating project, provided that both the New Mexico and Colorado portions of the project were included.

On July 13, 1955, the Bureau of Reclamation issued a "Notice of Initiation of Investigation" of the Animas-La Plata Project which stated in part:

1. Scope of proposed investigation. -- Investigations to date have shown the La Plata Division to be unjustified as an initial development and that it is necessary to consider the over-all plan for diversion of Animas River water to the La Plata basin in order to obtain economic justification. The tentative plan involves regulation at the Teft site on the Animas River, a canal diversion to the La Plata River with re-regulation of part of the imported flows and the excess flood flows of La Plata River at the offstream Hay Gulch site. Available flows in the La Plata River farther downstream would be diverted to the offstream Meadows site for use on new lands north of Fruitland, New Mexico. The proposed investigation is to refine the project plan and complete an authorizing report.

During the period 1951-54, various bills seeking to authorize construction of the Colorado River Storage Project were introduced into the Congress, but none succeeded. Early in the first session of the 84th Congress in 1955, five bills -- H.R. 270 (Dawson), H.R. 2836 (Fernandez), H.R. 3383 (Aspinall), H.R. 3384 (Aspinall), and H.R. 4488 (Rogers) -- were introduced in the House of Representatives to authorize construction of the storage and participating projects. A companion bill, S. 500 (Anderson, Allott, Barrett, Bennett, Chavez, Goldwater, Hayden, Millikin, Watkins, and O'Mahoney) was introduced in the Senate. After extensive hearings, the Senate enacted S. 500 on April 20, 1955, and the House passed H.R. 3383 on March 1, 1956. Differences in the two bills were reconciled by March 28, 1956, and on April 11, 1956, President Eisenhower signed into Public Law 485, 84th Congress, Conference Bill S. 500, authorizing construction of the project.

As finally drawn, the law authorized construction of four storage units (Curecanti, Flaming Gorge, Navajo, and Glen Canyon) and nine participating

projects. Priority was given to completion of planning reports on 25 additional participating projects, among which was Animas-La Plata.

On May 1, 1956, the New Mexico Interstate Stream Commission filed in the State Engineer Office in Santa Fe a Notice of Intention to Appropriate 49,510 acre-feet of water annually from the Animas River in New Mexico to provide full and supplemental irrigation of 20,600 acres of land in La Plata Valley, in accordance with recommendations of the Bureau's 1954 project status report.

On April 6, 1959, in response to an inquiry from the Secretary of the Interior and with the knowledge and consent of the Interstate Stream Commission, New Mexico assigned to the Bureau of Reclamation its water-right filing in behalf of the Animas-La Plata Project. Subsequently, on April 14, 1959, the Bureau filed with the State Engineer its formal plans to construct the project. On May 29, 1959, the State Engineer notified the Bureau that it had complied with requirements of New Mexico statutes and that water to serve the project had been reserved.

As a measure to expedite completion of a full feasibility investigation of Animas-La Plata, the Governor and Interstate Stream Commission in 1960 urged the New Mexico Board of Finance to appropriate the sum of \$10,000 to help finance the investigation -- with the proviso that the sum be matched by Colorado, and that the report be delivered by June 30, 1961. The Board of Finance made such appropriation on September 1, 1960. Colorado and the Bureau of Reclamation accepted the proposal, and a preliminary feasibility report was delivered in May 1961 -- some two years ahead of the date originally programmed. The investigation determined that, by means of storage regulation and improved distribution works, construction of the project would materially increase the usable flows of the Animas-La Plata River system for irrigation of non-Indian and Indian lands and for municipal and industrial uses by the city of Durango. Benefit-cost ratio for a 100-year

period at 2 1/2 percent interest was computed to be 1.13:1; for a 50-year period at 2 5/8 percent interest, 0.87:1.

The Flood Control Act of 1944, together with other Federal legislation, provides for review by affected states of reports prepared by Federal agencies on proposed water-development projects, and the Governor has designated the State Engineer to make such review for New Mexico. The engineering and legal staff of the Interstate Stream Commission assisted in review of the proposed Animas-La Plata project and New Mexico's informal comments on the preliminary report, contained in a letter dated August 14, 1961, raised a number of questions concerning 1) rehabilitation of existing irrigation works within the proposed project area, 2) drainage problems in the Meadows and McDermott areas, 3) supplemental water to be furnished by project works to holders of existing water rights, and 4) the water-supply analysis contained in the report. The letter recommended that early conferences be scheduled by representatives of the Bureau and the State of New Mexico to discuss preparation of the final draft of the feasibility report.

The Bureau's response to New Mexico's informal comments, dated October 24, 1961, accepted New Mexico's suggestions and agreed to modify the report accordingly in final draft. It also agreed to the proposed conferences of Bureau and State personnel.

On June 13, 1962, Public Law 87-483 was signed by the President. This law authorized the Secretary of the Interior to construct, operate, and maintain the Navajo Indian Irrigation Project and the initial stage of the San Juan-Chama Project as participating projects of the Colorado River Storage Project.

On October 15, 1962, New Mexico received copies of the final draft of the Animas-La Plata feasibility report, dated February 1962, together with a

request for the State's formal comments thereon within 90 days from receipt of the report.

The final plan had been modified to meet suggestions and requests contained in New Mexico's comments on the preliminary plan, but in scope and general features it did not differ materially from the proposed plan of 1961. The acreage to be served in New Mexico totaled 20,200 acres. Full service would be supplied to 14,700 acres, 2,600 acres of this being Indian lands. Supplemental water would be supplied to 5,500 acres of non-Indian land. Increased depletion of Colorado River water in New Mexico would be 34,100 acre-feet. The benefit-cost ratio for the 100-year cost analysis at 2 1/2 percent interest was 1.89:1.

The State Engineer and the staff of the Interstate Stream Commission at once began a study of the report, and comments were solicited from other State agencies whose interests were directly involved: the Department of Game and Fish, Department of Public Health, and State Highway Department. More difficulties were encountered in analysis of water supply, and on January 16, 1963, the State Engineer requested that the Bureau of Reclamation grant New Mexico an additional 60 days in which to prepare its formal comments. The requested extension was granted by Commissioner of Reclamation Floyd E. Dominy by telegram dated January 24, 1963. The difficulties were not resolved within the 60-day period, and additional time for further study was requested.

The problems encountered are summarized briefly below.

Throughout most of its negotiations with the Federal government and New Mexico concerning construction of water projects in the Colorado River Storage Project, Colorado had opposed authorization of the San Juan-Chama and Navajo Indian Irrigation Projects because of concern that these projects might exhaust New Mexico's compact water allocations, leaving insufficient water

for the Animas-La Plata lands in New Mexico. It was Colorado's belief at the time that the Animas-La Plata Project would be infeasible without the New Mexico lands.

In negotiating with Colorado and in supporting Congressional authorization of the Navajo and San Juan-Chama Projects, New Mexico had presented water-supply data showing that within the State's allocation under the Colorado River compacts there was ample water for these projects and for Animas-La Plata, with sufficient water remaining to provide about 112,000 acre-feet of consumptive use from Navajo Reservoir for future municipal and industrial uses in the San Juan Basin.

The Department of the Interior's testimony on the San Juan-Chama-Navajo projects set forth that there was adequate water for these projects and the Animas-La Plata Project, but was silent concerning the remaining amount that would be available within New Mexico's allocation. New Mexico was advised that the Department had limited its testimony to the water supply available for the irrigation projects in order to avoid making compact interpretations while *Arizona v. California* was before the Supreme Court.

Colorado ultimately agreed that there would remain adequate water for the New Mexico portion of the Animas-La Plata Project after authorization of the San Juan-Chama and Navajo Projects and thereupon supported legislation authorizing those projects. However -- apparently at the request of the State of Colorado (or, at least, of interests in Colorado) -- the bill reported by the House Committee and ultimately enacted by the Congress contained the following provision (sec. 11a):

No long-term contract, except contracts for the benefit of the lands and for the purposes specified in Sections 2 and 8 of this Act, shall be entered into for the delivery of water stored in Navajo Reservoir or of any other waters of the San Juan River and its tributaries, as aforesaid, until the Secretary has determined by hydrologic investigations that sufficient water to fulfill said contract is reasonably likely to be available for use in the State of New Mexico during the term thereof under the allocations made in articles III and XIV of the Upper Colorado Basin Compact,



and has submitted for such determination to the Congress of the United States and the Congress has approved such contracts.

Because of this provision in Public Law 87-483, the Bureau of Reclamation had advised certain prospective contractors for municipal-industrial water from Navajo Reservoir that until the Secretary had made a determination of the quantity of municipal and industrial water that would be available in Navajo Reservoir for long-term contracts, the Bureau was unable to allocate such water to any prospective user. Information furnished New Mexico by the Bureau of Reclamation reflected that the Bureau had received expressions of interest in water from Navajo Dam suggesting that the total annual diversion demand for municipal-industrial water by 1980 could amount to as much as 121,000 acre-feet.

In July 1962, in preliminary conferences with New Mexico representatives, engineers of the Bureau of Reclamation presented studies related to the determination under section 11(a) of Public Law 87-483 indicating that the amount of water remaining in New Mexico's allocation after allowing for all present uses and authorized irrigation uses could be either 1) 10,000 acre-feet short of the amount required for full development of the Animas-La Plata Project, with none remaining available for future municipal and industrial or other uses; or 2) it could be sufficient for the Animas-La Plata Project with an additional 80,000 acre-feet annually remaining available for future uses. It was suggested that either of these determinations would be possible, depending on whether the term "beneficial consumptive use" as used in the compact of 1922 should be construed to include evaporation from reservoirs in the lower basin. If such evaporation should be ruled to be not a "beneficial consumptive use," a larger share of the Mexican Treaty obligation could fall on the upper basin.

The share of the Mexican Treaty obligation to be borne by the Upper

basin depends also on the resolution of two other questions on which there are differing views: 1) Are man-made depletions on the tributaries of the Colorado River system in the lower basin to be accounted as "beneficial consumptive use" under the compact? and 2) Is "beneficial consumptive use" to be measured as diversion from the system less return flows thereto or as depletion of the flow of Colorado River at the international boundary?

It was appreciated by New Mexico that if such a determination should involve compact interpretations upon which there was not general agreement, there existed a possibility that controversy or litigation could be precipitated which might delay development in both the upper basin and the lower basin states.

It also was appreciated that, because of the possible effects on the Bureau of Reclamation program, the Secretary of the Interior might at this time seek to avoid making controversial compact interpretations in arriving at his determination. Bureau of Reclamation projections of development in the upper basin indicated that the upper basin might not be fully developed for 50 to 100 years. Therefore, it seemed possible for the Secretary to find water available for the Animas-La Plata Project as well as for contracts for a substantial amount of municipal-industrial water from Navajo Reservoir for 40 to 50 years without regard for how the controversial provisions of the compact might ultimately be interpreted, since the other upper basin states would be using materially less than their full allocations and the amount of water delivered to the lower basin would exceed the amount required under any conceivable compact interpretation.

It was equally possible that the Secretary's determination could be so unfavorable to New Mexico that the State would find it necessary to choose between the Animas-La Plata Project and reserving water in Navajo Reservoir for municipal and industrial requirements that might arise in future years.

While New Mexico remained convinced that there was adequate water in its allocation to serve the Animas-La Plata Project and to allow for a substantial amount of new depletion for municipal and industrial and other uses, it seemed prudent to wait until the Secretary had made some commitment concerning the amount of water that would be available for contract from Navajo Reservoir before commenting on the Animas-La Plata Project.

On the other hand, New Mexico was painfully aware that undue delay in submitting formal comments on Animas-La Plata could have the effect of delaying Congressional action in authorizing the project. At a meeting on July 8, 1963, the Interstate Stream Commission carefully considered all factors in the matter and it was the consensus of the members that it be suggested to Governor Campbell that he ask Senator Anderson to request the Secretary of the Interior's determination of water supply in Navajo Reservoir at an early date.

On July 26, 1963, Governor Campbell acted on the suggestion, and on July 30, 1963, Senator Anderson requested from Secretary Udall a commitment on the amount of water he would be willing to contract on a long-term basis from Navajo Reservoir for municipal and industrial uses, with the Animas-La Plata Project authorized for construction. On December 6, 1963, the State of New Mexico received a copy of a memorandum from the Commissioner of Reclamation to the Assistant Secretary of the Interior for Water and Power Development, making the requested determination in regard to the supply of water which would be available from Navajo Reservoir for long-term contracts with the Animas-La Plata, San Juan-Chama, and Navajo Irrigation Projects in operation.

As had been anticipated, the water-supply determination, dated November 26, 1963, avoided critical compact interpretation. On the basis of hydrologic studies for the period 1930-63, with projections to the year 2005 --

a time when it was assumed that upper Colorado River waters in New Mexico would be approaching full development -- it was determined that with development as contemplated in the Colorado River Storage Act the upper basin could meet its compact obligations for water delivery at Lee Ferry and still readily accommodate an annual 100,000-acre-foot depletion for municipal and industrial uses in New Mexico until 2005. The finding thus concluded that firm 40-year contracts (from 1965) to supply water from Navajo Reservoir to municipalities and industry, up to 100,000 acre-feet a year, could be entered by the Bureau of Reclamation.

The finding went on to stipulate: "The requirement of Public Law 87-483, that the municipal and industrial users share equally with the Indian and San Juan-Chama water users the unavoidable shortages in supply which will arise on occasion, should be reiterated in the proposed municipal and industrial contracts. Also, renewal clauses for municipal and industrial water beyond 40-year contract period must be subject to a second determination of the availability of water prior to a renewal of the contract. Contracts negotiated after 1965 should have shorter contractual lives so as to expire in the year 2005. Although only New Mexico at this time appears reasonably capable of approaching ultimate use during the 40-year period, her municipal and industrial contracts must, nevertheless, be made subject to availability of water under articles III and XIV of the Upper Colorado River Basin Compact in order to protect the Secretary in the event such contractual deliveries must be curtailed should one or more of the other upper basin states unexpectedly reach a parallel position in achieving ultimate use to the extent that the 100,000 acre-feet, or a portion thereof, would no longer be available."

New Mexico's delay in submitting formal comments on the final Animas-La Plata feasibility report had engendered some unrest among supporters of

the project in both New Mexico and Colorado. On January 20, 1964, the Interstate Stream Commission met in open session in Farmington to review the Animas-La Plata report and the Department of Interior's determination of water supply available to New Mexico. In attendance, in addition to Commission members and staff, were some 75 representatives of interested State and Federal agencies, the Upper Colorado River Commission, the State of Colorado, La Plata Conservancy District, and various northwestern New Mexico municipalities, private industries, and local ditch companies. The proposed report on the Animas-La Plata Project was described by Bureau of Reclamation officials. The Commission Secretary outlined the contents of the Department of the Interior memorandum and discussed its various provisions. The project report and the Department memorandum were discussed in detail and no objection to either was expressed. A draft of a letter setting forth New Mexico's proposed comments on the feasibility plan, prepared by Commission staff, was read and discussed in detail. The Commission thereupon passed a resolution recommending to the Governor of New Mexico that the State's formal comments on the Animas-La Plata plan include in principle those points set forth in the draft.

On January 28, 1964, Governor Campbell transmitted by letter to Secretary Udall New Mexico's formal comments on the proposed Animas-La Plata Project, together with official views of the New Mexico Game and Fish Department, Department of Public Health, and Highway Department. The letter stated that, in general, the State concurred in the conclusions and recommendations of the February 1962 Bureau of Reclamation feasibility report. It makes comment on a legal matter raised by a water-analysis procedure, suggests provisions that need to be included in the authorizing legislation, and states that it would be pleased to cooperate in securing the early authorization and construction of the project as a participating unit of the Colorado River Storage Project.



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**Whipple, John J., OSE**

**From:** Dantonio, John, OSE **Sent:** Fri 3/3/2006 11:22 AM  
**To:** scott@balcombgreen.com; Dantonio, John, OSE; ptyrre@seo.wyo.gov; LARRYANDERSON@utah.gov  
**Cc:** Rod.Kuharich@state.co.us; jshiel@seo.wyo.gov; Randy.Seaholm@state.co.us; Hmcfad@state.wy.us; NORMANJOHNSON@utah.gov; RobertKing@utah.gov; Lopez, Estevan, OSE; Whipple, John J., OSE  
**Subject:** Draft Proposal to Update 1988 Hydrologic Determination  
**Attachments:** Navset hydrodeter resolve4a.doc(34KB) Navset hydrodeter resolve4l (4).doc(55KB)

Gentlemen,

Please find attached to this e-mail New Mexico's proposal to resolve issues relating to the current update of the 1988 Hydrologic Determination. Let me know at your earliest convenience if you have any comments or suggestions on the draft proposal. We are scheduled to address this issue during our March 14th conference call and perhaps after that meeting we might have enough consensus to submit our draft with any revisions to the BOR and UCRC.

Regards <<Navset hydrodeter resolve4a.doc>> <<Navset hydrodeter resolve4l (4).doc>> ,  
John D.

*attached to*  
*22*

OSE-1768





STATE OF NEW MEXICO  
Office of the State Engineer

R. D'Antonio, Jr., P.E.  
State Engineer



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March 3, 2006

Mr. Scott Balcomb  
Upper Colorado River Commissioner  
818 Colorado Avenue  
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Mr. Larry Anderson  
Upper Colorado River Commissioner  
Division of Water Resources  
1594 West North Temple Suite 310  
Box 146201  
Salt Lake City, Utah 84114-6201

Patrick Tyrrell  
Upper Colorado River Commissioner  
Wyoming State Engineer  
Herschler Building, 4E  
Cheyenne, Wyoming 82002-0370

Dear Scott, Larry and Pat:

Transmitted herewith for your consideration is a proposal to resolve issues relating to the current update of the 1988 Hydrologic Determination (1988 HD). My staff and I can meet with any or all of you to provide additional information if that would be helpful. We suggest that a briefing meeting at this time be limited to the Upper Division states. Please let me know at your earliest convenience if you have any comments or suggestions on the proposal before we submit material to the Bureau of Reclamation and the Upper Colorado River Commission (UCRC).

The 1988 HD concluded that the total Upper Basin yield for a 25-year critical period is at least 6.0 maf, including CRSP reservoir evaporation. This minimum yield was based on a minimum objective release of 8.23 maf from Lake Powell, a tolerable overall shortage of about 6 percent for the critical period, maintenance of the minimum power pools at CRSP units, storage capacity in Lake Powell reduced for sedimentation through the 2040 planning horizon, and inclusion of available bank storage. The UCRC by resolution accepted this minimum yield for use in planning studies even though the UCRC does not agree with the minimum objective release and the assumed delivery of 0.75 maf annually toward the Mexican Treaty obligation.

The current Upper Basin yield study uses many of the same basic assumptions as the 1988 HD to evaluate the minimum yield. For planning purposes, the current yield study assumes a minimum

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**Mr. Scott Balcomb**  
**Mr. Larry Anderson**  
**Patrick Tyrrell**  
**March 3, 2006**  
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objective release of 8.23 maf, a tolerable overall critical-period shortage of 6 percent, maintenance of the minimum power pools, a 2060 sedimentation condition in Lake Powell reflecting an extended planning horizon, and a 4-percent bank storage factor consistent with the Bureau of Reclamation's Colorado River System Simulation (CRSS) model. The current yield study also includes all Upper Basin live storage in addition to CRSP active storage because all storage supports water use in the Upper Basin and impacts stream flows. The results of the current yield study are as described in the attached proposal.

The amount of water available for use by the Upper Basin states is determined in the current yield study using the CRSS model natural flows, as was the yield estimate from the 1988 HD. Reclamation uses the CRSS natural flows for all its reservoir operation studies, including to determine the Long-Range Operating Criteria and to evaluate alternative mainstream reservoir operations criteria such as that proposed by the Seven Basin States via letter to the Secretary of the Interior dated February 3, 2006. The Seven Basin States agreed that the alternative mainstream reservoir operations criteria proposed for an interim period ending 2025 via letter to the Secretary of the Interior dated February 3, 2006, is not to adversely affect the yield for development available in the Upper Basin.

The attached proposal is made for discussion purposes and should not be construed to prejudice the positions of the State of New Mexico, to limit the Upper Basin's depletion, or to interpret the Colorado River Compact, the Upper Colorado River Basin Compact, or any other element of the "Law of the River." Concurrence in the proposal could resolve outstanding issues relating to the accounting of Upper Basin consumptive uses for inclusion in the five-year Colorado River System Consumptive Uses and Losses reports that Reclamation submits to Congress and for administration of the Upper Colorado River Basin Compact.

The proposal is for the determination of a minimum allocation of water for uses by the Upper Basin states. Increases in the Upper Basin yield and in the states' Upper Basin use allocations may be made at a later date, if appropriate, to reflect: (1) a reduction in the minimum objective release from Lake Powell based on quantification of the Colorado River Compact Article III(c) requirement or other operational considerations; (2) an increase in Upper Basin storage capacity; (3) varying annual Upper Basin uses if sufficient technical analysis supports a specific relationship that can be used to reliably project annual uses as a function of natural flows at Lee Ferry; or (4) a decision by the UCRC and the USBR to not maintain the CRSP power pools. Credits or apportionments to each state for salvage by use of river channel losses in mainstream or perennial rivers may be determined at a later date if technical investigations reliably indicate that future on-site depletion amounts should be reduced to account a significant amount of salvage by use in said rivers so as to better determine depletions of the flow at Lee Ferry caused by Upper Basin uses. Further review to possibly increase the states' allocations could be made at any time, and should be conducted prior to the Commission making a determination of overdraft, if any, pursuant to Article IV(b) of the Upper Colorado River Basin Compact.

Thank you for your prompt consideration of the attached proposal. Please call me if you have any questions.

**Mr. Scott Balcomb**  
**Mr. Larry Anderson**  
**Patrick Tyrrell**  
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Sincerely,

John R. D'Antonio, Jr., PE, State Engineer  
Upper Colorado River Commissioner

Copy: Rod Kuharich  
Randy Seaholm  
Robert King  
John Shields  
Norm Johnson  
Hugh McFadden  
Estevan Lopez  
John Whipple



# PROPOSED HYDROLOGIC DETERMINATION

## ALLOCATION

1. The amount of water available from the flow at Lee Ferry for use by the Upper Basin states is at least 5.75 maf, on average, excluding shared Colorado River Storage Project (CRSP) reservoir evaporation.

The current yield study indicates that with a long-term average use demand in the Upper Basin states of 5.75 maf, excluding shared CRSP reservoir evaporation, there would be shortages to the demand in about 4 years of the 95-year period of record (see attachment). The computed total shortage to the demand would be about 8.3 maf, which averages less than 6 percent overall shortage for a 25-year period of critically severe hydrology and less than 2 percent overall shortage for the period of record.

The annual shortages would be about 3.2 maf in 1964, 0.4 maf in 1967, 0.4 maf in 1968 and 4.3 maf in 1977. The aggregate amount of shortage during the 1960s is about 4.0 maf, which is less than the current CRSP power pool contents of about 4.2 maf and slightly more than the projected 2060 CRSP power pool contents of 3.6 maf, excluding about 0.66 maf of storage below the minimum operating level for the Navajo Indian Irrigation Project (NIIP) at Navajo Reservoir. Therefore, should the computed shortages occur, the UCRC and the USBR could decide to address much of the shortage through use of the power pools as well as by use curtailments in the Upper Basin or reduced releases to the Lower Basin. Also, Upper Basin consumptive uses would be expected to be below average under critical-period hydrology due to physical water supply shortages in the Upper Basin, thus resulting in anticipated shortages at Lake Powell of lesser magnitude than are computed in the yield study using long-term average depletions. In particular, the computed annual shortage is 4.3 maf in 1977, but the natural flow at Lee Ferry in 1977 was only 5.4 maf and significant physical water supply shortages in the Upper Basin that year cause actual use to be much less than the long-term average.

The current yield study indicates that shared CRSP reservoir evaporation averages about 0.26 maf for a 25-year period of severe CRSP reservoir storage draw down (1953-1977). Adding the shared CRSP reservoir evaporation to 5.75 maf of use by the Upper Basin states, the total Upper Basin depletion including both Upper Basin uses and CRSP reservoir evaporation would average 6.01 maf for a 25-year critical draw down period. This total depletion is equivalent to the minimum Upper Basin yield of 6.0 maf determined for the critical period by the 1988 HD, with both yields computed for an overall shortage of about 6 percent.

Although the total Upper Basin depletion for a critical 25-year period would remain unchanged from the 1988 HD, the current yield study reflects the fact that

shared CRSP reservoir evaporation during a period of critical draw down of reservoir storage is substantially reduced from the long-term average evaporation. The 1988 HD did not take this into account when allocating Upper Basin uses and long-term average shared CRSP reservoir evaporation to the states. Thus, the current study results in an increase in the portion of the Upper Basin critical-period yield that is available for uses by the Upper Basin states.

For the period of record, the current yield study indicates that CRSP shared reservoir evaporation would average about 0.49 maf, as compared to the long-term average CRSP shared reservoir evaporation of 0.52 maf determined by the 1988 HD. Thus, the total Upper Basin depletion including both Upper Basin uses of 5.75 maf and CRSP reservoir evaporation would average about 6.24 maf for the period of record.

2. New Mexico's share of the Upper Basin allocation is at least 641,250 af, excluding New Mexico's share of evaporation from CRSP reservoirs other than Navajo Reservoir.

Based on item 1, at least 5.75 maf can be made available, on average, for uses by the Upper Basin states. Assuming a long-term average of 5.75 maf for uses by the Upper Basin states, the allocation for uses by New Mexico, exclusive of CRSP shared reservoir evaporation, is computed as:

$$(5.75 \text{ maf} - 0.05 \text{ maf}) \times 0.1125 = 0.6412 \text{ maf}$$

The allocation represents long-term average annual depletions, not limitations on annual or short-duration uses. A long-term average Upper Basin consumptive use of 5.75 maf per year is the annual amount used each year in the current Upper Basin yield study, excluding shared CRSP reservoir evaporation; and therefore, schedules of future depletions for planning purposes will use long-term average depletions. This is a conservative approach from a planning standpoint in that the average depletions during a critical period will be less than the long-term average depletions due to below-average water supply overall for the period and physical water supply shortages. The allocation is measured as depletion at Lee Ferry.

## DEPLETIONS

3. The modified Blaney-Criddle method with USBR effective precipitation is to be used to compute irrigation depletions in the Upper Basin; provided, that in some instances accounting of future irrigation depletions may be made using measured diversions less estimated returns (see item 4).

Under this proposal, the USBR would use the modified Blaney-Criddle method with USBR effective precipitation for developing its Consumptive Uses and Losses reports. The USBR and the Upper Division states also would use USBR effective precipitation for computing Upper Basin irrigation depletions for compact administration and for water planning and operations purposes.

4. NIIP depletions are to be determined based on diversions minus estimated returns.

The NIIP Biological Assessment sets forth a water budget procedure for estimating return flows from NIIP that takes into account the build-up of ground water storage underneath the project and the consequent delay in return flows reaching the San Juan River. As part of the water budget, the modified Blaney-Criddle method with USBR effective precipitation would be used for estimating crop consumptive uses on the NIIP provided that the State of New Mexico, the Navajo Nation and the United States may later develop an alternative method for estimating the crop consumptive uses, if appropriate, based on site-specific research on the project.

5. Evaporation from CRSP reservoirs is to be accounted as net evaporation after salvage of pre-reservoir losses.

The USBR computes net evaporation, reduced for precipitation and salvage of pre-reservoir losses, to account mainstream evaporation at CRSP reservoirs in its Consumptive Uses and Losses reports. The USBR also uses the net evaporation to estimate inflows, lake evaporation and depletions of natural flows at CRSP reservoirs for water planning studies, including in the CRSS model and the San Juan River Basin Hydrology Model.

6. Uses on certain ephemeral tributaries and from tributary ground water are to be accounted only to the extent that such uses affect the flow of perennial or mainstream rivers, and return flows to the ephemeral tributaries are to be accounted only to the extent that they return to mainstream rivers.

The Upper Basin allocation is from the flow available at Lee Ferry. Under this proposal, small amounts of consumptive use on ephemeral tributaries and from tributary ground water within the Chaco River drainage, the Chinle Wash drainage, and other drainages tributary to the San Juan River would be accounted based on their depletion impacts to the San Juan River. The USBR and the UCRC may account additional ephemeral tributary or ground water uses in the Upper Basin in a similar manner. Estimates of return flows to otherwise ephemeral tributaries, such as by the NIIP, would be reduced for channel losses in said tributaries that are incident to the use of water.

