San Juan have serious concerns. Those are issues that are going to have to be addressed. Now we can address them before we sign it and send it off or we can follow it and address them later on. This association is geared to making it the best settlement we can. We know that the settlement is going to go forward. It wasn't our intention in the beginning to stall this settlement out. We asked for some concessions that would benefit the irrigators in this basin and we never received on particular ones of importance, we never received them. So therefore we have been following this thing too politically and with that I will turn it back to you Mr. Chairman.

Questions from the Commissioners:

Chairman Dunlap asked whether either one of the representatives could summarize what you want. What would like this agreement to say that it doesn't say; let's not talk about timelines or anything else, let's talk about what do you want see in this agreement. If you could draft the agreement today from the irrigators I would like to know exactly what you would like to have.

Mr. Sullivan said that they had met with you folks here a few weeks ago and I think the number one issue at that time was the split priority on the Hogback and the Cudei.

Chairman Dunlap asked Mr. Sullivan to explain that.

Mr. Sullivan responded that there is 225 cfs on the Hogback/Cudei and, it is the same one that we submitted in the beginning, it called for 110 cfs to be an 1868 priority and 115 cfs to be 1909 priority is what I think it was. The reason we felt like that was because that gives; we still have some control, we still have some right. For example, the thing that we have run into in this area is not a matter or shortage, because sometimes there is no water. When there is not any water in the dam and you don't have any water coming into the system with 325 cfs on an 1868 priority date, they can essentially take most all of the water. When you got this built in there with the 15,000 cfs but if there is not any water in the dam, then the 15,000 cfs doesn't come into play. So then they can actually take 100% of the water out of the river system and leave everybody else high and dry. With 110 cfs with an 1868, the split priority, most all of our ditches fall in under that so then we could still maybe have a right to some of that water.

Chairman Dunlap said for the Commission's benefit, where does the later date come from.

Mr. Sullivan responded stated he thought the later date came from the fact that on their filings with the State Engineer's office, on some of those ditches they weren't filed for until a later date.

Chairman Dunlap asked if the Hogback and Fruitland have two different filing dates.

Mr. Sullivan responded that he thought so.

Chairman Dunlap stated he had not been aware of that.

Mr. Sullivan stated it was the Hogback and Cudei.

Chairman Dunlap stated that was different from the Fruitland ditch. Chairman Dunlap asked John Whipple for some information on the split priority dates for those two ditches.

John Whipple responded stated that as he recalled there is a filing made to the State Engineer by the Bureau of Indian Affairs. I am not clear on the 1909 date the one that I find in our files is dated 1913 for a 110 cfs for the Hogback Canal. That is the state filing for that project. The settlement deals with the reserved water rights claims of the Navajo Nation. Federal reserve rights are under a different standard than state historic use rights.

Chairman Dunlap stated that the way he read the Winter's Doctrine, once there are reserve rights, the 1868 holds whether they use it or implement it or not. Is that not correct?

John Whipple responded that federal reserve rights are not subject to loss for non-use.

Mr. Rogers stated that one of the reasons that we thought the split priority was reasonable was that the 1868 priority that we are talking about them getting is for the amount of acres that they are irrigating now. Arguably they cannot irrigate those acres with that much water, but the reason we feel that they can't, is not because there is not enough water, it is because of that system. If they are going to get the money to fix the system, the idea is from our standpoint at least that the water they are getting on the 1868 priority would irrigate the acres that they got in production now and this water that would be subordinated to the later date as far as priority goes would be for other land that will be developed later with the money that they get I suppose.

Chairman Dunlap stated that he understood that and commented that he understood this problem when the December 5th draft came out and that was the first time I had seen any part of the settlement and I thought that working either to try and get storage rights or something in there to soften that 1868 call with those two ditches. After reading the Winter's Doctrine, and according to the way I read the doctrine, it says that the 1868 is going to hold whether they are using it now or somewhere in the future. If that is true then we had to do something to keep that call down and by adding the alternative water supply, and I could be

corrected about that, but the way I understand it all but about four years out of a hundred according to the information that has been given to me the 1868 priority won't be called. It will actually change those ditches to a 1955 priority because that water, the 15,000, and the 15,000 won't be called but ever so many years it will average out at about 3,000 I think every year and that is only during the latter part of August and September in the real low flows but I thought we had solved that problem. I was pretty happy with that solution because we couldn't get the additional storage. We didn't have the water to store anyway. Now, I will agree, and Michael I think mentioned, that that water is top water on that reservoir. If there is a spill, then that water comes out first the way I understand it, but if the reservoir is full that is not going to impact anybody. So that is not a big problem but I thought we had solved this problem of getting away from a split priority for the irrigators. I thought that was a pretty good solution and hear you are not happy with it and I am kind of concerned that what we did in that wasn't to suit your needs. That is what we did to take care of that particular situation.

Chairman Dunlap asked Mr. Sullivan what else he would ask for besides the split priority.

Mr. Sullivan responded stated that he thought in the new draft since it is somewhat different than the first draft, I think there are some issues raised in the second draft that were probably never discussed on our part on the new draft. One of the real critical issues probably coming up is going to be how these annual diversions are going to affect our ditches in comparison we how we have operated in the past. I think we are going to lose water probably in that. We still need to be able to get water to the end of the systems. That is a critical part of any ditch operation and under this new system I do not think it is going to allow for that.

Chairman Dunlap commented stated he wanted to pursue that issue. If you need carriage rights in that ditch there are provisions in the Echo Ditch Decree for those carriage rights. There is also in the Hogback, Fruitland and the Cudei; the carriage amount of water, the diversion and the on farm delivery is two different things and depending on the length of the ditch that makes a difference. Now would it not be possible if we are not getting that until we can improve our ditches so that the guy on the bottom, because I am on the bottom end, I know what it is to be on the bottom end; is there not a way to increase that carriage because that water returns to the river anyway.

Mr. Sullivan responded that this is the concern right here that we have. In the past we always run if you were timed 90 or 70 or whatever it was cfs and maybe the curve is as John says it is it goes like this through the summer months. But all of the water above that between that and the 90 cfs was return flow to the river. Well we are not getting return flow to the river credits now. He is saying you have to operate within the limits of what you have. Then with what you start here and there is nobody irrigating and it goes on up then you can get water to

the end of the system. I don't know why we can't go with return flows to the river and maybe John can answer that.

Chairman Dunlap stated that he thought the on farm deliveries is an obligation that we have to consider.

John Whipple commented that he was sure others have the same concern. First of all I think it is important to recognize that this is a settlement of the Navajos rights and it does not bind anybody else's rights that may be adjudicated through the adjudication. With respect to the annual diversion amounts that what have been adjudicated to the Hogback and Fruitland projects the State Engineer Office through the settlement adjudication intend to pursue adjudication of annual diversion rights for irrigation leases in the basin. We have provided that here for Hogback and Fruitland projects based on the diversion requirements estimated for irrigation uses in the basin. They were identified in the report of hydrographic survey that was approved by the Echo Ditch Decree with the caveat that if the adjudication court were to use a different standard for determination of what the diversion requirements are on an annual volume metric basis for the irrigation uses that the annual volumes of diversions for Hogback/Fruitland could be increased. One of the comments that we received repeatedly on the December 5th draft from agricultural water users is that the Fruitland/Hogback project rights need to be limited to what their beneficial consumptive use requirements are and the way you determine that is based on what the diversion needs are through the irrigation season. Clearly in the spring and in the fall the beneficial consumptive use for that to be met does not require as much diversion as is needed during the peak of the irrigation season which is what the maximum cfs diverting rights are sized for. Now a lot of what I am hearing also is that in response to the December 5 draft the agricultural users and others in the basin wanted the Navajo Nation to waive objections that had to the Echo Ditch Decree rights. This gets back to what I had indicated earlier. We have a section in the settlement agreement that provides those waivers and we are talking with parties with respect to language modifications to try to address concerns as to how those waivers are written and what implications you may get out of those waivers. That is something we are looking at and again these are waivers. One of the conditions that the Navajo Nation has looked at with respect to their agreement to use some of their Navajo Indian Irrigation Project water on the Hogback and Fruitland is that the court in the San Juan River adjudication not adjudicate rights to the Echo Ditch Decree rights that are greater than what they got in Echo Ditch. Logically the idea is that those with Echo Ditch Decree rights are asking the Navajos to waive objections in the San Juan River adjudication to quantifying their rights consistent with Echo Ditch and also requesting that Hogback and Fruitland projects be provided with rights consistent with the Echo Ditch rights. Now if the Echo Ditch folks come in and argue in the San Juan River adjudication court that their rights ought to be increased then the Navajo rights would be increased accordingly on the same standard but also to the extent that the direct flow rights are increased that results in a lessened opportunity to put water into

storage at Navajo Reservoir in priority which reduces potentially the supply available to meet the contracts out of the reservoir including under the Navajo Indian Irrigation Project. So the idea is that there are benefits to both protecting the Echo Ditch rights and in return protecting the Navajo Reservoir water supply which again helps protect the ditch rights. It is kind of circular thing here. But that is the intent of the waivers in section 9-6 and the conditions regarding alternate water sourcing for Hogback and Fruitland.

Chairman Dunlap asked Mr. Sullivan if he had any other specific things he wanted to address.

Mr. Sullivan responded that he would be happy to try and answer the Commission's questions.

Commissioner Espinosa said she would like to know specifically how they would change this document right now and how it doesn't satisfy what you told us in earlier comment periods that you needed. If we are going to take into consideration what you would like; the split priority discussion was very helpful and beyond that I would like to know what specifically you do want because we need to see if it has been addressed or not.

Mr. Sullivan responded that they have talked about the split priority. I think the annual diversion requirement, annual diversions needs to be looked at. I think the language that stresses how each individual system is going to operate and function needs to be looked at.

Commissioner Espinosa asked Mr. Sullivan that when he says "needs to be looked at' what does he mean.

Mr. Sullivan responded that they would like a section or have it taken completely out as to how these things; we feel like this is a settlement with the Navajo Nation not a settlement of the Echo Decree or the Hammond Conservancy District or the La Plata District and pre-1907 declaration rights. We feel like that if they want a settlement but the issues in there that pertain to the Navajo water rights settlement. If we are going to have a section lets have an independent section or something that discusses these other issues but it shouldn't burden an independent sub-file holder somewhere down the line because all these things are tied to caveats back through the Decree.

Chairman Dunlap commented that he understood the concern and that it was a good point.

Mr. Sullivan said that if Jim should not have to go down if he wants to challenge his right, whatever reason it is, it is not up to me or, he will go before the courts or deal with the state on that. If he doesn't agree with it he can go into to the special master or go to the courts and he can change that. But if that is

adjudicated any different than what it says in the Navajo water rights settlement then everybody, if he tries that, then the Navajos do not have to give up that additional water and everybody that is attached to that 15,000 acre-feet is probably going to file a protest against him and he shouldn't have that burden to overcome as an individual water rights owner.

Chairman Dunlap concluded that he had their three thoughts and we will sure look at them.

Linda Horn

Ms. Horn introduced herself as a citizen of Farmington. She said her question goes back to the beginning...what the United States considers its obligations to be to the Navajo Nation under the 1868 treaty. At that time there were 100 square miles that were put into the reservation for the Navajo people and then there was an additional amount of land that was added to the reservation in 1875. Can you tell me why...is all of this land being considered with the 1868 priority date even though there were only 100 square miles that were actually put in reservation under the 1868 treaty and were the Hogback and Fruitland ditches in question within that boundary.

Mr. Whipple responded that the Navajo Nation's legal theory is that their rights date back to the treaty of 1849. As a compromise they agreed to a priority date of 1868 which is the date of the original reservation and it is true that there were additional lands that were set aside after 1868 within New Mexico. There have been arguments that perhaps the water rights ought to track the dates that the different lands were set aside. The negotiation that we concluded on was that the priority date would be 1868 for all of the reserve rights dating back to the time when Congress met to establish a permanent homeland for the Navajo Nation. Commissioner Espinosa asked where the 1849 date came from.

Mr. Whipple responded that 1849 was the original treaty between the United States and the Navajo Nation.

Ms. Horn asked if that was the treaty that had problems with it because the Navajos were off the reservation. I downloaded the Navajo Water Code because I was interested in finding out what the Navajos position was in their code. As far as I can read the Navajos do make a claim to the entire watershed of the Colorado River, is that your understanding. Has the code ever been upheld in a court other than in tribal court, the Navajo Code itself.

Mr. Utton responded that he did not believe that it has been upheld and further that he did not believe that it has been challenged. The Navajo Nation makes its claims through adjudication proceedings and that is what we are doing.

Ms. Horn commented that the Navajo Nation considers itself to be sovereign nation, but the United States government considers the Navajo Nation to be either a self-governance tribe or a dependent government, but not a sovereign nation.

Mr. Utton responded that they were a nation within the United States created by U.S. federal law.

Ms. Horn stated that her position is that there are way too many questions that are still up in the air. She said she seen a number of power point presentations today that I had not seen before and I had been to every meeting that I was aware of. I have a list of a number of power points that I would like a copy of and I have checked the web site for the State Engineer's Office and I have attempted to access some of the documents listed including Mr. Horner's suit. I cannot get beyond the first page.

Chairman Dunlap stated that he thought the entire document was accessible.

Ms. Horn responded that it wasn't on her computer. She said she would go to the library and try again.

Jay Burnham

Mr. Burnham introduced himself as the City of Farmington attorney. On July 21st and again on July 28th the City Council hosted a two informational sessions in regard to the settlement and heard presentations from a number of people knowledgeable about the settlement and also some of those who had feelings one way or another for or against the proposal in an effort to gain as much information as possible as a City Council so that they could take a position with regard to the settlement. On August 10th the City Council at its meeting on that night discussed what action they wanted to pursue at that time and the consensus of the Council was to direct staff to continue to meet with staff of the ISC/OSE and with the Navajo Nation in order to address some concerns that the City of Farmington had in regard to its municipal water supply and how it would be protected under the proposed settlement. On August 16th I drafted a memo to Mr. Hudson, the City Manager, outlining and listing some of our concerns and I would like to briefly summarize that. We had some concerns about the depletion schedule and whether the depletion schedule properly accounted for some uses on the stream system. We pointed out that we had problems determining whether, for instance the Ute Mountain Ute claims that have recently come to light, would be accounted for in the depletion schedule, whether the Navajo Nation tributary irrigation rights were in there; also whether the assumption that certain acreage in the NIIP would be fallow each year is a correct assumption. Some of those concerns were addressed in a meeting we recently had with your staff and Mr. Utton. Our main concern however with the depletion is that it shows the municipal and industrial uses at a depletion of approximately 9,000

acre-feet per year and that number is static for the period of time covered by the depletion schedule and we wondered whether that provided growth in municipal and industrial uses for the next 30 or 40 years or whether that would be a problem if it was expected to remain static then obviously the depletion schedule is inadequate. Those concerns were also discussed and particularly in regard to the City's rights and how they were accounted for in the depletion schedule and we appreciate some of the information provided in that regard and we look forward to continued discussions with your staff. A second area that we discussed briefly is that we had some concerns about the NIIP allocations and whether the 270,000 acre-feet of depletion was properly accounted for and why it was necessary to allow the Navajos to average the 270,000 depletion over a 10 year period because as that fluctuates up and down may cause a problem for other users on the river. Some of those concerns have been addressed and explained why the averaging is in there. Another concern we had is in regard to the permit 2883 or the ALP rights (Animas-La Plata Project) that permit issued to the federal government for the ALP as you may know the project as it is being built will not use all the rights there were applied for in that permit and the beneficiaries of the ALP including the City of Farmington have always considered that the beneficiaries would be able to use that water that is excess of what the project is going to use. We have always depended on that and now the July 9th draft of the agreement does provide that 50% of the permit 2883 water will be allocated to the Navajo Nation. That is a change in the document that concerns the City of Farmington. Also, another area that we are concerned about is in the language that was just discussed a few minutes ago Mr. Whipple told the Commission about the paragraph 9.6 sections that have to do with the recognition of the Navajo Nation of the Echo Ditch Decree. Some of the language in there is not clear to the City of Farmington as to how it would handle a large portion of our rights where irrigation rights that were allocated to the City of Farmington to be held in trust for the residents of the city. There were irrigation rights in the Echo Ditch Decree however they were not treated the same as other irrigation rights in the Echo Ditch Decree and the City of Farmington is concerned that the language the Navajo Nation agrees to abide by the Echo Ditch Decree in regard to irrigation we are not sure how that applies to these trust rights which the City of Farmington has filed an application with the State Engineer's Office to transfer the purpose of use from irrigation to municipal and industrial for those what we call the trust rights. These issues which are quite technical and I understand the difficulty for people to understand and why and I have lived with them for the last 14 years that I have been with the city attorney's office in Farmington and I am still not clear on all of the questions. We might propose that there be some language changes to address our concerns in the next draft. This list of concerns I have outlined is not exhaustive. I am sure there are other concerns that we may have.

Chairman Dunlap thanked Mr. Burnham for the City of Farmington hosting all the meetings and seminars on the issue.

Mary Fischer

Ms. Fischer commented that she was speaking as a citizen and not necessarily as a Farmington city council member. Within my district I represent approximately 10,000 and probably have the highest number of Navajo constituents than any other council member. There well being as Farmington citizens is paramount to my comments. I understand the importance of water to this area and I understand the disastrous effects of lack of water. She said she was no more comfortable with the conclusions that have been explained to me in this water rights settlement than I was a year ago. I still have to ask the basic question is can any of you assure me there is adequate water available to supply all the needs that are out there. Within this depletion schedule the Ute Mountain Ute claims which are 7,300 to 9,300 acre-feet and they have been filed with the court whether they are legitimate or not they are certainly on the table now. Those are not in the depletion schedule. None of the federal claims that are out there, whether they be BIA, BOR, whoever, they are not included in the depletion schedule. Recently Patrick Lyons, the Commissioner of Public Lands, has filed a claim on behalf of the public lands of New Mexico. He has not quantified what he feels he is entitled to but he feels he has legitimate claims with an 1850 priority date which would precede even the Navajo claims. One of the largest questions that I have is who is in charge. When we talk about growth for this area the City of Farmington has some significant concerns. If we have to buy the water that we are currently using, we only have a few options available to us either we start charging for the use of our recreation facilities or we simply let them go. The area of trust rights remains uncertain. Ms. Fischer commented that there is no funding in the settlement to get water lines out to the rural residences. The Navajo Dam is going to be re-operated and the flows are going to be so low that we will be unable to operate our hydro electric power plant. Ms. Fischer concluded her remarks by asking the Commission to hold off in making any decision in supporting the settlement to account for the changes that will be made.

Steve Cone

Mr. Cone said that one of the questions he had was to Chairman Dunlap and that was that Chairman Dunlap also sits as the Vice Chairman of the San Juan Water Commission. At the last meeting of the San Juan Water Commission you said that if that commission were to take any action either pro or con on the proposed Navajo water rights settlement that you would essentially recuse yourself from that vote. What I am wondering is will that be true in terms of the action this committee may eventually take and if so why are you making that decision and are there others on this committee that may have to make the same kinds of decisions for the same reasons.

Senator Domenci was quoted just yesterday talking about that this settlement proposal is not percolating the way it should. He has in mind a high test,

espresso, water settlement bill where he can tie all of these things up in a nice package and force federal funding through Congress. Mr. Cone said he thought that was a poor choice and as you have heard today there are lots of questions about this July 9th draft. The public really has not had time to digest the stack of material that goes along with those documents and there are still ongoing negotiations. As a member of the public and just speaking for myself I would like to be able to formally comment on each iteration of this settlement as it is drafted down the road. I don't want to think that there can be major changes and then there is no option for the public to weigh in on what the possible repercussions of those changes might be. So I am asking that that happen.

Chairman Dunlap interjected that so far Mr. Cone hadn't addressed anything in the settlement. You have just criticized people and processes. Can you tell me what you don't like about the settlement; specifically.

Mr. Cone responded that one of the things is a letter which came out of the Interstate Stream Committee dated February 11th 1998. It is a letter from the Interstate Stream Commissioners and the San Juan Water Commissioners to Senator Domenci saying that they would not support any kind of settlement of the Colorado Ute water rights without a provision in the Act that would allow for the non-Indian beneficiaries of the ALP do have that additional water from state permit 2883 returned to them. Now we see in the July 9th draft that that water that by law is earmarked for the non-Navajo beneficiaries of the Colorado Ute settlement is now to be split 50-50. That is a huge departure from exists now as public law and I am not sure that we have heard the rationale behind that to satisfy those who it might most effect here in this community. Another concern that I have is the depletion schedule. I really believe it is illegitimate and it has been pointed out exactly why. It does not address claims, substantial claims, that are being to water within the San Juan Basin and because it doesn't address those claims there is a squeaky bit of room according to the depletion schedule itself; where is that water going to come from. One of the other things that I would like to share with the Commissioners is the federal government's policy for settling Indian water rights settlements and participating in the negotiation of the settlement of Indian water rights claims. This is the federal government's policy and I don't see anybody here today from the federal government. In all of the meetings that we have had in this basin for the last month not one federal agent has shown up to describe their participation in these negotiations and they have been directly involved over the last two years. We do not know where they stand but they do have a policy. The federal government does not follow there own policy and that should be a concern of this Commission. One other concern I have is there is a proposed memorandum of agreement by the Navajo tribe with the federal government for the disposition of the NIIP and the terms of that memorandum of agreement seem to be in conflict with some aspects of the settlement agreement proposal and I would like to see how that can be ironed out in public instead of trying to work on it in back rooms. The last price tag that we heard on this water rights proposed settlement is $1.2 billion. When this July

9th draft came out it was below $1 billion and we know the BOR projects run typically run 300% over and above the initial estimate so we are looking at is a $3.5 billion federal settlement 99% of which will probably be picked up by the federal taxpayer. That is wrong.

Chairman Dunlap interjected by asking Mr. Cone if he thought it should be paid for on a local basis.

Mr. Cone responded that you ought to take a close look at costs and I do not think that has happened yet.

Chairman Dunlap asked if Mr. Cone had heard him ask Mr. Whipple and Mr. Utton if they had anything to do with the numbers in the settlement and they said no.

Mr. Cone responded that he had not heard that as he just recently arrived at the meeting.

Mr. Cone commented that there has been recent publicity concerning Open Meeting Act violations.

Chairman Dunlap said that had nothing to do with this settlement.

Mr. Cone asked the question if the state has performed a quantification of the Navajo Nation's PIA in the San Juan Basin and if not why not. Mr. Cone distributed some additional questions to the Commissioners.

Commission Espinosa commented that it was not unusual to have different documents come out of negotiations because by the word negotiations that is typically what it is and typically what will happen is there is a document presented for public comment which is done in December and room for public comment. In some areas you only get 30 to 60 days of comment and we have gone to great lengths to in trying to get all public comments in. After that we have another document based on trying to deal with the comments that we have heard from all of you here and from others. We believe that the comments we have heard over the past six months are being re-drafted and re-negotiated to take care of those concerns in the current draft document. There will likely be another draft document.

Bernadette Tsosie

Ms. Tsosie commented that she believed the settlement will provide certainty. We want to be able to have municipal uses, industrial uses and agricultural uses. Without the settlement that will not happen and we want as the Navajo Nation to be able to do that. We want to be able to have economic development and we want to have schools in our communities. Yes it is true that the cost involved in

the settlement does not include every home hooked up with running water but it will provide a better and closer system for the Navajos who continue to haul water to be able to have better water and a closer system of water. The settlement will make possible for us to do that. There was a comment that the Navajo Dam will not be able to meet the needs but I thought this is why we have the San Juan River implementation program so that we can work with the different agencies to try and recover the fish as well as water planning usage. Ms. Tsosie concluded her remarks by commenting on the lessons that were learned in the shortage-sharing agreement. She said there has been quite a bit more public comment on this settlement as compared to the Jicarilla settlement.

Glo Jean Todacheene

Ms. Todacheene introduced herself as a member of the Navajo Nation Water Rights Commission. She said it was interesting to hear the comments about the land and water. She said she could remember her elders telling her that they could remember when the covered wagons first came and the Navajos were living right by the river and they got chased across the river. But this is the 21st century and we are neighbors. The populations are growing and the Navajo Nation realizes that the City of Farmington understands that plus the other communities of Aztec and Bloomfield. People in the United States out towards the east are suffering under harsh weather conditions. The hydrologists and the water resources with the Navajo Nation they are very well aware that they want certainty and I know that the Navajo Nation vice president has used that and it is a negotiation. Where are not radical and greedy and we don't want to get mean or anything and it is really amazing to see the State of New Mexico and the Navajo Nation coming together to work this out. The Navajo Nation wants the settlement because it is long overdue. We are not going to please everybody. I know it is difficult and we can get emotional, we might even lose friends over this but the bottom line is that there is a huge generation that is coming up and they are going to be moving in here and the drought is very serious. This is where the Navajos are willing to talk about a shortage agreement. Ms. Todacheene said she understood and appreciated the needs of the farming community.

Commissioner Espinosa asked if the Ute Mountain Ute claims have been taken care of the settlement.

Mr. Utton responded that the Ute's apparently have filed a claim with the court for about 7,500 acre-feet. The state has met with the Ute representatives including their lawyer, and has evaluated their claim and I do not think that we are about to agree with their claim in that amount. In evaluating the Ute lands in New Mexico there isn't even a member of the Ute tribe living on those lands. There does not appear to be any defensible large use of water on this land in terms of any PIA claims away from the river. If the Ute's are interested having recognized some stock uses and other ranch type uses on this land I think the state and the Ute's can come to an agreement that would not be a significant claim perhaps 200 or

300 acre-feet. If the Ute's believe they can claim 7,500 acre-feet they are going to have to prove that in court and the State of New Mexico will be opposing those claims. We do not believe it impacts the current settlement document with the Navajo Nation.

Commissioner Espinosa asked if it was true that the Navajo have an agreement with the federal government on the NIIP.

Mr. Whipple responded that it was his understanding that the Navajo Nation is interested in negotiating a memorandum of agreement with the United States with regard to the operation and transfer of NIIP facilities to the Navajo Nation. We are not privy to any negotiations that may be ongoing. Mr. Whipple said any agreement would not impact on the current settlement as it contemplates the transfer of the facilities.

Maria O'Brien

Ms. O'Brien introduced herself as a water counsel for BHP and as most of you know BHP is the owner and operator of four coal mining operations and is the owner of a direct flow right to 51,000 acre-feet of San Juan River water, a 39,000 acre-foot depletion. So obviously we have a significant interest in the settlement of any claim on the river and how those rights are administered. We use that water to supply those four coal mining operations as well as supplying the entire water supply to the Four Corners power plant which is operated by the Arizona Public Service Company as well as part of the water for the San Juan generating station which is operated by the Public Service Company of New Mexico. If you had looked a previous comment that BHP submitted in conjunction with APS and PNM you know that we generally support very wholeheartedly the settlement of the Navajo Nation claim. We are continuing to work with your staff on the new draft and specifically we believe the alternate water supply as it has been referenced is a significant improvement to the settlement draft. We have some questions about operation and implementation of that alternate water supply but generally believe that it is a very positive aspect to the new draft. We are also looking at the marketing and leasing provisions and we believe again that those are a positive aspect of this settlement to provide the Navajo Nation as much flexibility as possible in utilizing its water resource and allowing other users in the basin access to that water resource. Ms. O'brien commented on the waiver provisions, section 9-6, which are a new provision in the settlement which the Navajo Nation has apparently is agreeing to waive certain objections of Echo Ditch Decree rights. This is simply consistent with what the adjudication court has already decided in the San Juan Basin in terms of preservation of parts of the Echo Ditch Decree.

Jack Scott

Mr. Scott stated there was a provision in the agreement for providing $10 million for upgrading existing non-Indian ditches on the river systems. That is a great concept when you read it however it is subject to the legislature appropriating a million dollars a year over 10 years. The problem with that is there is not guarantee the legislature would appropriate and the other problem with it is that about 17 years ago it was going to take $200 million to bring these ditches up to a standard that would probably take care of the diversions in Colorado on the Animas and that was only on the Animas ditches. So I think since everyone is asking for the ultimate hand-out from the federal government that there should be a price tag of about $400 million in this from the federal government to upgrade the existing ditches on all rivers here and to provide the municipalities and rural water systems funds so that they can bring their systems into a form that they are now junior water rights after this settlement can be utilized. Mr. Scott concluded by stating that he did not believe the 15,000 acre-feet of storage would not be enough and that he believed a hydrographic survey was needed before the agreement moves forward.

Bob Oxford

Mr. Oxford said he would limit his comments to the annual diversions. This appears not only in 9-6 of the settlement agreement but it appears in the partial final decree on page 14 and 15 and it deals with the Echo Decree as envisioned when I was hired there 16 years ago and I was hired by the Santa Fe office to manage the Aztec office and to know the Echo Decree back and forth so I could deal with any issues that come up on it. I worked there for 12 years and I have been retired 5 years. I would question whether Mr. Whipple's interpretation of the annual amounts that are limited to go down the Echo ditches and also the Navajo ditches. The question with the Echo ditches is whether that decree actually limited on an annual acre foot per acre basis. That was in a report that was in our office for the 12 years that I worked there and we never considered that was part of the adjudication. It was an exhibit that was put before the court to consider information in there to determine how much water could be delivered down that ditch but judge decided a cfs delivery was the only thing appropriate. This annual amount that Mr. Whipple and the State Engineer Office is suggesting would cut the cfs in half and the ditches cannot operate that way. So it is a very serious thing that now it seems like this is being...and the reason that it is in the partial final decree I guess is because if the Echo ditches are not limited to the annual acre foot per year flowing down that ditch the two Navajo ditches will not be bound by the amount of rights in this settlement. So actually if the thing works out in the court that the cfs is the only thing that was adjudicated in the Echo Decree then in this settlement the Navajos will not have any acre feet amount adjudicated to them on the two Navajo ditches. That is the way I read it. So I think there is a big problem and it going to cause major concerns. I worked there 12 years and that wouldn't come up too much but we never considered as I recall

any thing about an engineer's report that was a part of the court case but it was only used as an exhibit and the judge when he adjudicated those rights in the Echo Decree, you have to remember that those rights were all pre-1907 rights they may have been a few post-1907, they had not been before the court before, that water was acquired by historical use and so it wasn't acquired under 1 cfs for 40 acres or 1 cfs to 70 acres it was acquired by what ever it took to go down the ditch to get to the land to grow a crop and the judge at that time determined that it took 40 acres 1 cfs off of the river to operate those ditches. So I would say to Mr. John D'Antonio check with some of the other experts besides what you have been hearing from or an outside opinion and let's get this on a reasonable basis.

Carroll Crawford

Mr. Crawford introduced himself as a member of the Bloomfield Irrigation District board. Part of what I say relates to the ditch and part is my own opinion. This settlement agreement is kind of like a marriage you speak now or forever hold your peace. We were concerned about key issues that might cut or impair the ditches off in the agreement. Since that haven't been resolved as of a week ago the BID ditch passed a motion to support the Agricultural Water Users and Mr. Horner in their motion to restrain signing until these issues were resolved. Only then were we invited to start talking about those issues in depth but I think that needs to carry on further until not only our ditch but the other ditches have the opportunity also. We are talking about waivers in the settlement that sometime we ought to wonder if we should have a waiver to the state agencies not to attack the Echo Ditch Decree because it seems like that is kind of the way it is headed. We are concerned that the settlement agreement did incorporate certain linkage in the partial final decree that could impair our rights or cut ditches off from their water. The Navajo water settlement amounts in priority should be about their rights not about the non-Navajo rights but we do expect even handedness for ours and theirs and that they be treated alike. So we would have to reject the concept that which short circuited our ditches rights to negotiate with the State Engineer on whatever our negotiation rights are actually perfected. The Navajo Nation and the BOR should not be agreeing to what non-Navajo rights are because this is the Navajo settlement. The next thing about the ditch operation that is not fully understood by those doing the negotiations is that those working for the ditch understand it but whatever your cubic foot diversion is a maximum limit whether it is 200 or 100 or whatever. But even when you look at our ditch 43 miles long it starts out wide and gets narrow at the end so your head gates are sized for the amount of water that that individual is suppose to receive. That ditch to operate has to be full whether you are taking only half of your diversion to get it to all of the customers or whether if it is the middle of the summer and you need to the full diversion to get the customers served. The ditch has to operate. It appears that the storage water will benefit the junior water right holders. The next thing that I would mention is the subordination dates in the agreement are probably the wrong dates which were picked using permits that were never perfected and March of 1958 would probably be the more perfect number.

Technically the BID can only support terms that comply with state law as that is our only protection for the ditch and members.

Commissioner White stated he wanted to respond to the comment Mr. Cone made regarding his suggestion that our Chairman should recuse himself from this Commission during those hearings. I would emphatically disagree because you are dealing with two separate kinds of organizations. The San Juan Water Commission represents users that may or may not be affected by this agreement he is a member of that organization and rightly he probably should recuse himself from that. In the case of this Commission, this Commission is the appropriate state agency for handling this agreement between the Navajo Nation and all of the other players and he is the Chairman of this Commission. This Commission in my opinion is the only citizen's oversight group in New Mexico that oversees interstate water issues as well as many other water issues state wide and he is in the appropriate position to chair this Commission. He has the knowledge, he has the background, and he has the experience to manage this Commission in behalf of the State of New Mexico and so from that point of view I emphatically I would encourage him never to recuse himself from this issue because he is in the right place at the right time.

Chairman Dunlap stated that concluded the public comment portion of the meeting and that he appreciated everyone's comments. He apologized for his haste in getting the comments in but that he thought everyone did very well. We covered a lot of ground and admittedly you brought up some things that I had not been aware of and whether we can do anything about them or not as far as the amendments or changes they will certainly be looked at.

AGENDA ITEM #18 – POSSIBLE COMMISSION ACTION ON RESOLUTION APPROVING NAVAJO NATION WATER RIGHTS SETTLEMENT:

Commissioner White moved, Commissioner Espinosa seconded, to table this agenda item.

Commissioner Espinosa commented that a lot of the comments that they had heard are very appropriate. We want to make sure that we get those into the record as well as into our negotiating team so that they can discuss them with the Navajo Nation and I presume that there will be another draft coming out and that too will be open for comment. Obviously there is going to come a time where we will have to close this off but as we continue to develop the documents these right now are living documents and we are trying to make sure we get comments taken care of as best we can and to negotiate those within the settlement agreement. Nobody is going to get everything they want.

The motion carried unanimously.

AGENDA ITEM #19 – FINANCE COMMITTEE REPORT ON THE ISC FY06 BUDGET REQUEST:

Herman Garcia presented information on the FY06 budget request for the Office of the State Engineer and the Interstate Stream Commission **[see attachment 9]**.

Questions from the Commissioners:

Commissioner White asked if there are recurring expenditures from the Irrigation Works Construction Fund, contractual and cost sharing programs that we share with other agencies.

Mr. Garcia responded that was correct particularly with the Corps of Engineers.

Commissioner White stated that the point is that in a year or two those funds will not be available and the legislature is going to have to bite that bullet if we are going to continue the programs.

Mr. Garcia agreed with Commissioner White's analysis.

Chairman Dunlap stated that the Finance Committee had discussed this problem and there may be some alternatives that the Director and Secretary may want to bring up.

Secretary D'Antonio commented that the trust funds are important for our continued survival as an agency because they have replaced the general fund. What we are going to do is to ask for additional general fund even though we were suppose to maintain a flat budget. In the Finance Committee meeting we realized that New Mexico is in a pretty decent year for revenues based on oil and gas royalties and we thought that one solution might be for the Governor, to, in lieu of a general fund increase to our agency, to make a one time addition of perhaps $20 million, and put $15 million in one of the trust funds and $5 million in the other. That would allow us to obtain a multi-year distribution of funds to help us through the next 4 or 5 years and that may be a way to do it and not impact the general fund. What we need to confirm is whether you can add funds to a trust fund.

Commissioner White commented that he believed that is possible and statute provides that other sources may be used.

There ensued a general discussion of possibilities of building up the trust funds and where the balance of the trust funds had been spent.

There was a general consensus that the Commissioners would lobby the legislature in the next session on behalf of the Commission to receive the funding necessary to support the programs of the Commission.

AGENDA ITEM #20 – SET FUTURE MEETING DATES, OTHER BUSINESS AND INFORMATIONAL ITEMS NOT REQUIRING ISC ACTION:

Chairman Dunlap stated that the next meeting will be September 13 in Las Cruces.

Director López suggested that an alternate location for the meeting if the LRG regional water plan is not ready would be in Santa Fe.

Commissioner Espinosa moved, Commissioner Harris seconded, to meet on the 13th of September in Las Cruces if the LRG Regional Water Plan is ready and, if not, the meeting will be in Santa Fe. The motion carried unanimously.

AGENDA ITEM #21 - ADJOURN: Commissioner Garcia moved, Commissioner Harris seconded, to adjourn the meeting. The motion carried unanimously. The meeting was adjourned at 4:20 p.m.

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

Approved at the September 13, 2004 meeting of the Interstate Stream Commission.

Jim T. Dunlap, Chairman — Date 9-13-04